

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RENEE BUTZ,)	
)	
Plaintiff)	
v.)	C.A. No. 05-495 (JJF)
)	
LAWNS UNLIMITED, LTD., and)	
EDWARD FLEMING,)	
)	
Defendants.)	
)	

**APPENDIX TO DEFENDANTS' OPENING BRIEF IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT**

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TABLE OF CONTENTS

2007.10.17 Jointly Stipulated Uncontested Facts	A1
2007.08.29 Excerpts from Fleming Deposition Transcript	A6
2007.08.28 Excerpts from Butz Deposition Transcript	A28
2006.02.04 Cecil County Government Application	A129
2005.02.25 Jeanne Fleming Timeline	A133
2005.02.25 Howard Letter to DDOL re: Charge Response.....	A135
2005.02.25 Edward Fleming Timeline	A151
2004.06.17 Group Agreement, Optimum Choice	A152
2004.03.26 Unemployment Hearing Appeals Decision	A157
2004.02.23 Optimum Choice Subscriber Reconciliation	A162
2004.02.18 Cecil County to Butz Offer of Employment.....	A167
2004.02.17 DDOL Charge of Discrimination.....	A168
2004.02.11 Cecil County to Butz Letter of Hire.....	A173
2004.02.06 Fleming Fax to Howard re: Unemployment Claim	A174
2004.02.05 DDOL Employer Fact Finding Document.....	A176
2004.02.03 Notice of Employment Separation re: Butz	A179
2004.01.24 DDOL Sexual Harassment Questionnaire	A180
2004.01.24 DDOL Discipline Questionnaire.....	A186
2004.01.22 Fleming to Optimum Choice re: Butz Disenrollment.....	A192
2004.01.08 Fleming Fax to Howard re Termination Letter.....	A194
2004.01.07 Fleming to Butz Termination Letter	A196
2004.00.00 Watson Vacation Request Forms.....	A198
2004.00.03 Affidavit of Watson	A205
2003.12.31 Lawns Unlimited Year-End Summary re: Payroll.....	A207
2003.12.29 Bayside Health Absence Excuse.....	A231
2003.10.01 Lawns Unlimited Office Manager Job Duties	A232
2003.01.01 Butz Agenda for Employee Meeting	A235
2003.03.19 Butz Vacation Request Form	A240
2002.11.04 Fleming Fax to Optimum Choice re: Insurance Waiver.....	A241
2002.10.16 Butz Performance Appraisal	A245
2001.01.01 Lawns Unlimited Vacation Policy	A247
2001.01.01 Lawn Unlimited Policy Handbook	A249

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JOINTLY STIPULATED FACTS

WHEREFORE, the parties agree and understand that dispositive motions brought pursuant to Rule 56 of the Federal Rules of Civil Procedure can be determined only where there “is no genuine issue as to any material fact.” Fed. R. Civ. P. 56(c). In order to provide the Court with as clear a record as possible, the parties hereby stipulate that, for the limited purposes of summary judgment, the following facts are not in dispute:

1. Defendant Lawns Unlimited, Ltd. (“Lawns”), is a small business operating in Milton, Delaware.
2. Lawns provides various types of lawn care, including landscaping, hardscaping, and irrigation services, among others.
3. Lawns was founded by Defendant Edward Fleming and his wife, Jeanne Fleming in 1987.
4. Including the Flemings and their children, Lawns currently has approximately thirty employees.
5. Lawns employees are divided into two general categories—Field and Office.
6. Field employees work directly on-site at the job location.

7. Mr. Fleming, who holds the title of President of Lawns, works hands-on in the Field. He also shares the responsibilities for Office employees with his wife.

8. Defendants hired Plaintiff in September 2002 to replace the previous Office Manager.

9. Plaintiff held the position of Office Manager for her entire period of employment.

10. Dina Alderucci was hired after Ms. Schatz left in June 2003.

11. Debbie Watson replaced Ms. Alderucci in November 2003.

12. In the Field, the Foremen are key employees.

13. Mauricio Miranda and Hugo Sanchez have been Lawns' two Foreman.

14. Plaintiff began working at Lawns on September 4, 2002, as a temporary employee with permanent employment as the final goal.

15. Plaintiff became a full-time Lawns employee on October 16, 2002.

16. Defendant terminated Plaintiff effective December 23, 2003.

17. Beginning in approximately October 2003 until the time of her termination, Plaintiff commuted to Defendants' office in Milton from her home in Newark, Delaware.

18. Plaintiff began her new job as a Junior Accountant for the Cecil County Government on March 1, 2004.

19. Plaintiff received a bonus in 2002.

20. Plaintiff did not receive a bonus in 2003.

21. Plaintiff did not receive a pay increase on or after her first anniversary date.

22. Plaintiff received unemployment compensation after her termination from Lawns.

23. There are two full-time Office positions, Office Manager and Office Assistant.

24. Plaintiff announced her pregnancy in approximately April 2003.

25. Defendants knew that Plaintiff intended to take maternity leave following the birth of her child.

26. In an e-mail dated December 24, 2003, Plaintiff told Defendants that her maternity leave had begun, effective December 23, 2003.

27. Defendants believed that Plaintiff had secured other employment prior to December 23, 2003.

28. For the past twenty years, the Flemings have operated the business and actively manage its operations.

29. Office employees handle the payroll, accounting, and other administrative duties.

30. Mrs. Fleming, who holds the titles of Secretary and Treasurer, shares responsibilities for the behind-the-scenes operations of the business.

31. During the December 24, 2003, telephone conversation, Plaintiff told Mr. Fleming that she intended to return to work after her maternity leave.

32. During the December 24, 2003, telephone conversation, Plaintiff's husband told Mr. Fleming that she intended to return to work after her maternity leave.

33. Plaintiff called the Lawns office on January 5, 2004 after the birth of her child, and left a message.

34. Plaintiff's father-in-law called Defendant after Plaintiff received her termination letter.

35. In the Termination Letter, Defendants cited increased health care premiums as a reason for Plaintiff's termination.

36. Plaintiff believes that Defendants terminated her due to increased health care premiums.

37. Defendant's appeal of the findings of the Delaware Unemployment Insurance Referee was unsuccessful.

38. At the time of her termination, Butz was paid \$12.00 per hour.

39. The number of Lawns employees eligible for these employee benefits is low.

40. The only Field employees who have been eligible for benefits were Miranda and Sanchez, the key foreman.

41. As owners, the Flemings also receive certain benefits, such as health and life insurance.

42. Defendants provided its key employees with paid time off as well as paid vacation.

43. Key employees were paid at their regular rate for certain designated holidays.

44. Plaintiff was paid for each of the designated holidays during her employment.

45. Request forms were submitted to Mr. Fleming for approval.

46. Debbie Watson utilized Vacation Request Form.

47. Plaintiff had health care coverage immediately after she became a permanent employee without a waiting period.

48. At the time of Plaintiff's employment, Defendants' health insurance provider was Optimum Choice.

49. At the time of Plaintiff's employment, Defendants' health care plan provided for "employee-only" coverage.

50. At the time of Plaintiff's employment, Lawns paid 100% of the health care premium for key personnel.

51. Plaintiff moved to the Bethany area from Cecil County, Maryland in 2002.

52. Plaintiff moved to Bethany area to be with her now-husband, Scott Butz, who had moved to the area for a job.

53. As Office Manager, Plaintiff was responsible for accounts receivable and accounts payable, payroll, and general clerical duties such as taking phone messages and filing paperwork.

54. As Office Manager, Plaintiff was responsible for communicating and developing workplace procedures.

55. In 2003, Defendants held a staff meeting that all employees were required to attend.

56. At the meeting Plaintiff spoke/addressed workplace procedures and practices including the importance of teamwork and the value of feedback and employee suggestions.

57. At the staff meeting, Plaintiff encouraged the employees to communicate their ideas or suggestions with her or Laurie Schatz.

58. At the meeting, Plaintiff explained the importance to accurately record time worked on a Lawns production sheet.

59. At the meeting, Plaintiff explained that accounts payable invoices must be kept current and that any problems should be brought to her attention right away.

60. At the meeting, Plaintiff discussed the tardiness and absenteeism policies.

61. Plaintiff invited the Fleming family to her wedding.

62. Plaintiff invited Mrs. Fleming and their children to her baby shower.

63. Mrs. Fleming spent most of the summer of 2003 visiting her mother in Missouri, who was suffering from terminal lymphoma cancer.

64. Mrs. Fleming's mother passed away on November 13, 2003.

65. Mr. Fleming put Scott Butz in touch with a potential job lead.

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/s/ Renee M. Butz

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Butz v. Lawns Unlimited, Ltd. and Fleming

Page 1

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Plaintiff;)	
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v.)	Civil Action No.
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LAWNS UNLIMITED, LTD.,)	
and EDWARD FLEMING,)	
)	
Defendants.)	

Deposition of EDWARD WILLIAM FLEMING taken pursuant to notice at the Law Offices of Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, Delaware, beginning at 2:24 p.m. on Thursday, August 30, 2007, before Ann M. Calligan, Registered Merit Reporter and Notary Public.

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Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 13

1 A. It was presented to you at the time of your
2 employment with Lawns Unlimited.

3 Q. Does the policy cover the health plan?

4 A. The employee policy?

5 Q. Yes.

6 A. No.

7 Q. Why not?

8 A. Because it doesn't.

9 Q. What about leave policy?

10 A. What type of leave policy are you talking
11 about?

12 Q. Medical, non-medical, short-term leave,
13 long-term leave?

14 A. No.

15 Q. Why not?

16 A. Because it's not in there. It doesn't cover
17 it.

18 Q. Since there's no written leave policy, what is
19 the company's practice in handling medical and
20 non-medical requests for leave?

21 A. What type of leave are you asking?

22 Q. Medical or non-medical?

23 A. For medical leave -- for sick time, for
24 vacation, and personal days off, there's a form that

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 14

1 needs to be filled out and authorized by myself or
2 Jeanne so that the office manager knows exactly what
3 day a particular employee was off so it can be
4 documented if they are receiving paid time off,
5 holiday pay, sick time off, personal days. How long
6 they plan to be off. When they return back to work.
7 It can be taken as a full day or it can be taken for a
8 few hours depending upon the leave.

9 Q. How about unpaid leave?

10 A. Unpaid leave is the same. On that form it will
11 have paid leave or unpaid leave. So that we know when
12 employees, after it's authorized, when they will be
13 leaving work and when they will be returning to work
14 so that we can continue to run the business
15 effectively.

16 Q. Why are so many of your policies not
17 documented?

18 A. I don't understand the question.

19 Q. Why are so many of your leave policies, your
20 vacation policies, your health insurance not covered
21 in your employee handbook?

22 A. It's not included in the employee policy.

23 Q. I'm asking you, why not?

24 A. Because it's not.

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 22

1 know when it was.

2 Q. Do you have any vacation forms when I went on
3 vacation?

4 A. I don't have your file in front of me.

5 Here's one here 3/19 of '03. So that's in
6 here. 10:00 o'clock, 11:30.

7 Q. Based on your testimony, I had to wait one
8 year, which would have put us November of '03. So how
9 did I get paid vacation?

10 A. Well, vacation is lumped into personal time
11 off, which would be sick leave and also personal days
12 off, and you are qualified for that after two months
13 of employment.

14 Q. That would have been three days, 24 hours. So
15 can you explain the additional?

16 A. No. You -- you got paid for vacation. You got
17 lucky I guess and got paid for paid time off. That
18 you weren't supposed to.

19 Q. But you sign off on payroll, correct?

20 A. I sign off on the payroll, that's correct. The
21 time sheets, I sign off on the time sheets. You
22 produced the payroll checks.

23 Q. Was office personnel treated any differently
24 than field personnel with regards to completion of the

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 24

1 were off so that you knew what to pay them based on if
2 they were there that particular day or not there that
3 particular day.

4 Q. So, from my understanding, you're saying no, so
5 the office staff had to fill out these forms as well
6 as the field office.

7 A. Field office?

8 Q. Field personnel.

9 A. I only had one office --

10 Q. Field personnel?

11 A. Well, you would fill them out for them so that
12 you could track their time so that you could figure
13 out if they were going to get paid for that day or not
14 get paid for that day.

15 Q. So the office manager would fill out the field
16 personnel's vacation forms?

17 A. They would make sure to get them filled out if
18 they were not there that particular day so you could
19 do your payroll. Yes.

20 Q. If the office manager filled out the forms,
21 then how could they be approved?

22 A. When you filled the forms out, that gave you a
23 running paper trail so that you could do your payroll,
24 so that you can make sure that they were -- most all

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 50

1 A. I remember when you were pregnant we were very
2 happy for you, yes. You were very excited and happy
3 also. And our kids -- my wife was very excited for
4 you too. My children.

5 Q. Do you remember when you -- when did you
6 discuss her pregnancy?

7 A. Do I remember when I discussed your pregnancy
8 with whom?

9 Q. Was it daily, weekly, every day, or you know,
10 all ninth months?

11 A. No. I don't remember. But I'm -- when you
12 went on your check-ups, we always asked you how
13 things -- how you were doing and you would bring in
14 the pictures, the sonograms. And we were excited to
15 see those. Having five children of our own, we are
16 very happy and excited for you and Scott.

17 Q. How often would you have discussed her
18 pregnancy?

19 A. I don't know, Renee.

20 Q. Did plaintiff discuss maternity leave with you?

21 A. Yes.

22 Q. Did plaintiff train employees to perform her
23 job during her maternity leave?

24 A. As much as you could, yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 53

1 you were unable to be reached by telephone.

2 Q. So you never spoke to plaintiff?

3 MS. DiBIANCA: Objection. Misrepresents
4 his testimony. Go ahead and speak.

5 Q. Well, defendant said many, many phone calls not
6 being returned. When were these messages left?

7 A. I talked to you on December 23rd. We were very
8 excited for you to have this baby. We were -- I
9 offered for your family and your mother-in-law and
10 father-in-law and your mom and dad, if they needed to
11 use our house to shower or whatever the case may be,
12 which is only a mile from Beebe hospital.

13 I left the day that you were leaving to go
14 to the hospital. Scott and your mom came into the
15 driveway. I waved to them real big, and they didn't
16 react at all. I went Christmas shopping, came back,
17 and Debby said, "Ed, sit down. I need to tell you
18 something."

19 Debby only was with us a very short time,
20 as you know. And she told me that you were leaving;
21 you weren't coming back. You have my letter my
22 timeline in there. And we were headed -- I was
23 leaving the office. And I was headed down to church
24 to go to confession with my family.

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 54

1 And I called you on the phone. I was
2 devastated. I said, "Renee, you are like family to
3 us. You are the office manager. I just want to
4 know -- let you know what Debra Watson has said to
5 me." I said, "I need for you and for her to come into
6 the office tomorrow, whatever time is convenient for
7 you to get down here." I said, "This is not fair to
8 me to have two individuals, one saying one thing, one
9 saying another." I said, "I trust your judgment.
10 You've been here longer than her. I just need you
11 guys to come down here." I said, "I need to figure
12 out who's telling the truth and who's not telling the
13 truth."

14 Q. Were these other many phone calls after
15 December 23rd, when did you call again?

16 A. Well, I called your cell phone. You gave Debra
17 Watson a different phone number and instructed her
18 that I could not use that phone number. And she was
19 the only one that could use that phone number to call.
20 So I called your cell phone because we had questions
21 about other items.

22 The last phone call that I was able to
23 call you on was the next morning, December 24th. I
24 talked to your husband Scott. He would not allow me

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 55

1 to talk to you. He informed me that you were
2 officially on maternity leave and she doesn't have to
3 talk to you or see you until the end of that maternity
4 leave. And I asked him nicely. I said, "I need to
5 talk to Renee. This is between Renee and I." I said,
6 "I need to know what's going on. She's the office
7 manager of our company. I can't be left hanging, can
8 not be left like this." I said, "I need to figure out
9 who's telling the truth. I should not be put in this
10 position, especially yourself because you were part of
11 the family. You went to the girl's swim meets and
12 Shane's swim meets. You went to business meetings
13 with the family. We went to your wedding."

14 We just felt that it was -- I was just
15 trying to gather the facts, but I could not get any
16 phone calls from you. I could not get any
17 correspondence back from you until after the letter
18 was written. Then I got correspondence from your
19 father-in-law. At that point in time, your
20 father-in-law and I had a nice talk. We went over the
21 exact timeline that I just explained to you, what
22 happened. And he said, "Will you give Renee her job
23 back?" I said, "Please, just have her give me a
24 call." Period. We don't have any labor contracts in

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 56

1 Lawns Unlimited. We never had a labor contract in
2 Lawns Unlimited. All we wanted to do was to hear from
3 you, Renee. And that's it. And we couldn't get any
4 correspondence out of you.

5 Q. So after December 24th, you no longer spoke to
6 plaintiff?

7 A. I was unable to speak to the plaintiff because
8 she would not return phone calls. She gave Debby a
9 telephone number that I couldn't use. I didn't
10 understand that. Jeanne and I were both devastated.
11 And you know, Jeanne's mom -- the reason why Jeanne
12 wasn't there most of the summer is because her mom had
13 terminal lymphoma cancer, and she had passed away on
14 November 13th. And she was gone for two to three
15 weeks to the funeral and to take care of the estate.

16 So she had a very traumatic 2003, trying
17 to raise four children plus work in the office plus
18 take care of her mom in Missouri, which was 1200 miles
19 away. And I had extra responsibilities on myself also
20 because I had to take care of the children, which
21 would have been four children left at home. Shane was
22 in college in Denver -- University of Colorado at
23 Boulder, Colorado.

24 Q. So you did not speak to plaintiff on December

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 57

1 26th or 29th of December?

2 A. I don't remember. I don't think I did, but I
3 know Debby did because we had a problem with the
4 computer and Debby had your phone number.

5 Q. Did Debby have plaintiff's cell phone number?

6 A. No. She had another phone number that only she
7 could use.

8 We waited for your call after I talked to
9 your father-in-law. We did not fill your position.
10 And I guess we were saddened and disappointed that you
11 didn't call to talk to us at all about the baby and
12 about your job.

13 Q. Did plaintiff call you to let you know the
14 birth of her child?

15 A. Yes, she did. She left a message after the
16 baby was born.

17 Q. Did you call plaintiff to congratulate her?

18 A. I don't remember. But all I know is the kids
19 were very excited. We were very excited. And it
20 would have been nice to get a phone call so we could
21 come see you at the hospital, and the baby. But
22 Debby's testimony said that Scott was not going to
23 allow us to see the baby, and if we did go into the
24 room, that he would escort us out of the room.

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 60

1 It would have been from today, so it would
2 have been a late number, above 10.

3 I have it as Butz 19.

4 MS. BUTZ: Yes. Butz 19.

5 MS. DiBIANCA: I don't know if he needs
6 it, but just so it's on the record.

7 BY MS. BUTZ:

8 Q. Did you call the plaintiff after writing the
9 termination letter?

10 A. No. We were waiting for you to call after I
11 spoke to your father-in-law.

12 Q. Did your wife buy the plaintiff a baby gift?

13 A. Yes, she did. When she was out in Missouri,
14 she bought the baby gift in Missouri, and then flew
15 home.

16 Q. Did the plaintiff's husband Scott provide IT
17 assistance to Lawns Unlimited?

18 A. What's IT?

19 Q. Information technology. Networking, computer
20 networking, computer problems, questions.

21 A. At the house, yes. And I think when you had
22 problems at the office, he did, yes.

23 Q. Was he paid for these services?

24 MS. DiBIANCA: I want to get back to the

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 68

1 Q. Was it sent certified?

2 A. Yes.

3 Q. What date did you terminate plaintiff's health
4 insurance?

5 A. Based on the letter, it was December 31st of
6 2003. Coverage was extended to January 14th of 2004.

7 Q. When was she notified of cancellation?

8 A. I don't know.

9 Q. Was plaintiff offered COBRA?

10 MS. DiBIANCA: I'm going to object because
11 actually the judge did rule in the order that COBRA
12 was not an issue. But go ahead and answer.

13 A. I don't know.

14 Q. Did plaintiff ever tell you she was not coming
15 back to work?

16 A. No, but she would not return our phone calls.

17 Q. Prior to termination, did you ask plaintiff for
18 a doctor's note concerning plaintiff's time off?

19 A. Can you repeat that again please.

20 Q. Prior to termination, did you ask plaintiff for
21 a doctor's note concerning plaintiff's time off?

22 A. On December 23rd, I handed you a vacation
23 request form for time off so that you could put down
24 exactly when you were going to be back. I left before

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 69

1 you left, and you did not fill it out. So I didn't
2 know when you were planning on coming back. I
3 requested this. You did not fill it out. And we did
4 not get a doctor's notice when your maternity leave
5 was started.

6 Q. Do you know why plaintiff would not fill out
7 the form at best?

8 A. I don't know why you didn't fill it out. No, I
9 don't know why you didn't fill it out. Can you tell
10 me?

11 Q. Did you provide any documentation of the fact
12 that you asked for this information?

13 A. Can you repeat that, please.

14 Q. Can you provide any documentation of the fact
15 that you gave the form to the plaintiff or asked for a
16 doctor's note?

17 A. When you were in the office getting your
18 things -- you were in the office that morning to get
19 the some of the paperwork that you had done, and I
20 went over and handed you the paper. I said, "Renee,
21 please fill this out. I know you're going to be going
22 on maternity leave. I need to know how long and when
23 you are going to be back." When I got back to the
24 office, the form was sitting right there, and it was

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 70

1 blank.

2 Q. Did you indicate that your insurance premium
3 was much higher due to pregnancy medical bills?

4 A. Actually the lawyer wrote the letter and I
5 signed it.

6 Q. So you signed something without reading it?

7 A. I guess I didn't read it carefully enough, but
8 I did sign it.

9 Q. So you did not write the termination letter?

10 A. No.

11 Q. I'm sorry?

12 A. No.

13 Q. How would he have gotten the dates?

14 MS. DiBIANCA: How would who have gotten
15 the dates?

16 Q. How would his attorney have gotten the date of
17 the termination for --

18 A. We gave him the dates. I gave him the dates.

19 Q. And how could he come up with a \$23,000 figure?

20 A. I don't know. Maybe I called Beebe hospital on
21 a C-section. I don't know.

22 Q. Did plaintiff's spouse promise you on December
23 24 that plaintiff would be returning to work after
24 maternity leave?

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - Butz

Page 76

1 Q. What personal belongings did plaintiff remove
2 from the office?

3 A. Everything that she had in the office.

4 Q. What items were they?

5 A. Pictures, all the stuff that you brought to put
6 on your desk. Your name. You had your name plaque
7 there. You had pictures. You had all of your
8 belongings that you put on your desk, I guess.

9 Q. Did plaintiff provide defendant's attorney
10 settlement offers?

11 MS. DiBIANCA: Again, absolutely object.
12 Settlement can't come in. And we are getting near
13 five o'clock too.

14 MS. BUTZ: I'm almost done if you'd like
15 to take a break.

16 MS. DiBIANCA: Okay.

17 (Recess taken.)

18 MS. DiBIANCA: Can we have Fleming 3.

19 (Fleming Deposition Exhibit 3 was marked
20 for identification.)

21 BY MS. DiBIANCA:

22 Q. Go ahead and read through it.

23 A. Okay.

24 Q. Does this look like plaintiff's performance

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 82

1 Q. So according to Butz 17, based on that, one of
2 the things you're basing your decision on is the
3 information contained in that document?

4 A. Yes.

5 Q. And I'm going to talk about only Ms. Butz's
6 employment and shortly thereafter. So if I don't
7 specify so, you can assume that. That is the time
8 frame.

9 What was the vacation policy for new
10 employees?

11 A. Vacation policy for new employees is one year
12 after their anniversary date.

13 Q. How much time were they entitled to take?

14 A. 40 hours or more. A business week.

15 Q. Did that subsequently increase over time the
16 longer they worked?

17 A. Yes.

18 Q. So if Ms. Butz actually took vacation time
19 prior to completing her one year of service, do you
20 know why that would have been?

21 A. It must have been an oversight on my part if
22 she took vacation. The forms weren't filled out and
23 she was paid for it.

24 Q. After the termination letter -- I believe it's

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 87

1 A. No.

2 Q. Can you give me some evidence of something I
3 could use to believe that? Do you have children
4 yourself?

5 A. Yes, I do. My wife has been pregnant five
6 times, and I'm still married.

7 Q. And did she work?

8 A. She -- as soon as the babies were born, she had
9 them on her knee and she worked every day and night.

10 Q. Does she still work?

11 A. Yes, she does.

12 Q. And does she work for Lawns Unlimited from time
13 to time?

14 A. Yes, she does.

15 Q. Did you and your wife interview plaintiff?

16 A. Yes, we did.

17 Q. And were hiring decisions made jointly between
18 the two of you?

19 A. Yes. They were.

20 Q. And were firing decisions made jointly between
21 the two of you? Did you share responsibility for
22 those decisions?

23 And I'm sorry. I should be fair. I'm
24 only referring to office personnel.

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 95

1 Q. Are you aware of any law or rule that would
2 require an employer to provide health care insurance
3 coverage above and beyond what they normally offer to
4 an employee?

5 A. No.

6 Q. Did you have any reason to believe that your
7 wife harbored any kind of animus toward pregnant
8 women?

9 A. No. Not at all.

10 Q. Mr. Scott Butz, your relationship with him was
11 what prior to the 23rd of December?

12 A. Renee's husband.

13 Q. Did you have interaction with him as far as his
14 work went?

15 A. Yes.

16 Q. Can you give me an example?

17 A. Well, Scott and Renee were having a tough time
18 because Scott was laid off from his job, and we -- I
19 had contacted several of my friends and customers to
20 try to get Scott a job within his -- I guess his
21 work -- line of work, computer programming. I got him
22 a job interview at Inervet and I can't remember who
23 the other companies were off the top of my head.

24 But I set him up with the head computer

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 96

1 person at Inervet who was the scoutmaster to our
2 troop. And I was assistant cubmaster or scoutmaster
3 of the troop when Shane was going through his Eagle
4 Scout, and his son got his Eagle Scout at the same
5 time Shane did. And I got him in contact with Mark
6 and Mark got him in right away and gave him an
7 interview for a job.

8 Q. Is it fair to say that you reached out and
9 tried to help the plaintiff and her husband?

10 A. Yes.

11 Q. And you did that why?

12 A. Because I felt bad for them. They were trying
13 to get on their feet. They were young. You know, he
14 just lost his job. He was trying to get contacts to
15 get into places. And I felt that it was my obligation
16 as, you know, Renee working there that we should try
17 to help him out.

18 Q. You wanted to help him out, is that fair?

19 A. Yes.

20 Q. If you know, the Optimum Choice insurance
21 coverage offered to and received by plaintiff during
22 her employment, are you familiar with that, generally
23 speaking, that plan?

24 A. The insurance that she had?

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 98

1 10, 15, 25. I can't remember but that's --

2 Q. Fair to say there was, in fact, a co-pay?

3 A. Oh, yes. Mm-hmm.

4 And the other nice thing is we paid
5 100 percent of the insurance. That's what we wanted
6 to do.

7 Q. Do you pay 100 percent of the insurance now?

8 A. No, we don't.

9 Q. How much do you pay now?

10 A. 75 percent.

11 Q. Do you know the time that you switched that to
12 75 percent coverage?

13 A. March 15, 2004.

14 Q. And why did you do that, if you recall?

15 A. It's just getting too expensive to continue
16 with the 100 percent.

17 Q. It was a cost issue, then?

18 A. Yes.

19 Q. Just give me one moment. I just want to find a
20 document.

21 A. I remember when I was working with Monsanto
22 Chemical Company, which was a huge corporation and
23 Jeanne was having all the babies, I mean, it was
24 costing us -- it was an 80/20 program and it was

Butz v. Lawns Unlimited, Ltd. and Fleming
Edward William Fleming - DiBianca

Page 99

1 costing us like \$2,000 to have the insurance back
2 then, you know. 1986. '85, '86, '88, and 1990.

3 Q. Would that explain at all why, as indicated in
4 one of the documents that's been admitted, although I
5 don't recall the number, why Lawns chose to extend
6 Ms. Butz's insurance coverage throughout the birth of
7 her child?

8 A. Yes. We didn't want her to be burdened with
9 them, with those expenses.

10 Q. And so Lawns Unlimited took the initiative
11 themselves. That was not something that the insurance
12 company reached out for, correct?

13 A. That's correct.

14 Q. Would it be fair to say that's generally not
15 something that you do for someone you harbor an animus
16 towards?

17 A. That's correct.

18 Q. Yesterday we painstakingly went through lots
19 and lots of numbers reflecting Ms. Butz's submitted
20 damage. Do you recall that testimony that she gave?

21 A. Yes, I do.

22 Q. If you recall, some of the expenses that she
23 had, medical expenses that she has listed were in
24 amounts like \$15, or \$60, a variety, some of them

Butz v. Lawns Unlimited, Ltd. and Fleming

Page 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RENEE M. BUTZ,) Volume I of II
)
Plaintiff;)
)
v.) Civil Action No.
) 05-495-JJF
LAWNS UNLIMITED, LTD.,)
and EDWARD FLEMING,)
)
Defendants.)

Deposition of RENEE M. BUTZ taken pursuant to notice at the Law Offices of Young Conaway Stargatt & Taylor, LLP, The Brandywine Building, 17th Floor, 1000 West Street, Wilmington, Delaware, beginning at 9:13 a.m. on Wednesday, August 29, 2007, before Ann M. Calligan, Registered Merit Reporter and Notary Public.

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www.wilfet.com

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 17

1 A. '94.

2 Q. Did you attend college?

3 A. Yes.

4 Q. And which college did you attend?

5 A. Goldey Beacom.

6 Q. And did you graduate from Goldey Beacom?

7 A. Yes, I did.

8 Q. What year?

9 A. '99.

10 Q. With what degree?

11 A. A B.S. in accounting and minor in business
12 management.

13 Q. After that, any kind of post-graduate work?

14 A. No.

15 Q. You said you were married, correct?

16 A. Yes.

17 Q. And the name of your husband?

18 A. Are you talking about my current --

19 Q. Yes.

20 A. Scott Michael Butz.

21 Q. When did you marry him?

22 A. September 6, 2003.

23 Q. And you're living together now?

24 A. Yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 26

1 A. Down in Millsboro.

2 Q. So did you move because of the job site move
3 or --

4 A. No. I moved to the beach and then they allowed
5 me to work, continue working in Millsboro.

6 Q. How long did you continue at the Millsboro
7 facility?

8 A. It was couple months.

9 Q. What was your job title there -- I'm sorry.
10 Accounts payable manager. Is that what you continued
11 to do in the Millsboro as well?

12 A. No. My job function there was payroll.

13 Q. And did the job function change? Did that
14 correspond with the move to Millsboro?

15 A. Correct.

16 And I just want to emphasize. I moved
17 down there because of my husband living down there.

18 Q. Okay. That's fine. That was my next question,
19 so...

20 This is Scott Butz, right?

21 A. Mm-hmm.

22 Q. Were you married at that time?

23 A. No.

24 Q. And you said he moved. Was he, I guess, living

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 31

1 Q. Obviously we are going to go back to them, so
2 I'm going to skip forward now and go to current
3 employer. Who is your current employer?

4 A. Cecil County Government.

5 Q. And what's your job title there?

6 A. Junior accountant.

7 Q. What office do you work in?

8 A. Elkton.

9 Q. Do you like the junior accountant job at Cecil
10 County Government?

11 A. Yes.

12 Q. Are you currently seeking other work?

13 A. No.

14 Q. After Lawns, that was the first place that you
15 worked; there was no employer in between?

16 A. No.

17 Q. And I'm going to guess the -- are you under a
18 doctor's care at the present time?

19 A. Regular doctor?

20 Q. Any doctor.

21 A. Yes.

22 Q. For what condition?

23 A. Pregnancy.

24 Q. Any other reason?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 34

1 going to be reviewing and we are actually going to go
2 through that. So that's fine. You can certainly
3 clarify if anything comes up later?

4 Let's go ahead and start with that list.
5 Actually before that list, I think is -- well, the
6 next page, interrogatory response number 9, you've
7 provided a list of damages that you are claiming, is
8 that correct?

9 That would be on page 5.

10 Is that correct?

11 A. I'm sorry. Can you repeat the question?

12 Q. That's quite all right.

13 Your response to interrogatory number 9 is
14 a list of damages that you're claiming, is that
15 correct?

16 A. Yes.

17 Q. Pain and suffering in the amount of \$50,000, is
18 that correct?

19 A. Correct.

20 Q. And punitive damages in the amount of \$50,000,
21 is that correct?

22 A. Correct.

23 Q. And medical expenses in the amount of
24 \$1,127.25, is that correct?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 38

1 A. Correct.

2 Q. Is that correct?

3 A. Yes.

4 Q. So maybe you can give me a little more
5 information based on this chart, sort of how you came
6 up with these numbers, what they are representative
7 of?

8 A. The -- not having my information with me, the
9 \$32.44 is the premium that is biweekly. And I times
10 it by 24 weeks. And that is how many weeks that I
11 paid out in 2004. And then so forth in 2005 and 2006,
12 they were based on 26 weeks.

13 Q. So when would the 2004 biweekly insurance
14 premium payments have started?

15 A. March 1st of '04.

16 Q. But you are not asserting damages past April
17 22nd, 2004, is that correct?

18 A. Can you repeat the question?

19 Q. Is it correct that you are not claiming damages
20 past April 22nd, 2004?

21 A. For the medical?

22 Q. For anything?

23 A. Not for the medical premium -- or for the
24 medical premium, yes. But for everything else, no.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 43

1 March of 2004 for the rest of the year, biweekly
2 payments, that's right?

3 A. Correct.

4 Q. Why were you January and February not included
5 for 2004?

6 A. Because I was not employed at Cecil County
7 Government.

8 Q. So have you produced any documents in support
9 of the amount of the premium? Is there any document
10 that I have been given that I can verify the amount of
11 your premium?

12 A. I have to go back through the initial
13 disclosure information that I gave.

14 Q. Do you believe that you may have produced
15 documents relating to your current employment?

16 A. I believe I gave some information to my current
17 employment.

18 Q. If you could, just turn back to Butz Number 1
19 and look at question number 16 and your response
20 thereto. If you could review the question and the
21 response for me, and then when you have reviewed them,
22 just let us know.

23 A. Okay.

24 Q. And could you tell us what the question said,

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 49

1 Q. And you are still paying those premiums, is
2 that correct?

3 A. Yes.

4 Q. When will defendants no longer owe you
5 compensation for insurance premiums paid to your
6 current employer?

7 A. I guess until we settle this case.

8 Q. Explain to me the connection between your
9 insurance premiums and defendant's, if you can.

10 A. Can you elaborate a little bit?

11 Q. Well, I'm looking actually for you to elaborate
12 because I don't think I quite understand how the two
13 are connected.

14 A. The defendants insurance was 100 percent
15 covered. Now I'm paying for it.

16 Q. And your current insurance, have you told me
17 anything about your current insurance coverage?

18 A. No.

19 Q. Have you provided the Court with any
20 information about your current insurance coverage?

21 A. No.

22 Q. Is your current insurance as good as it was
23 with Lawns?

24 A. I don't know until -- I don't know until I look

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 50

1 through, which we discussed prior.

2 Q. Do you have the same co-pay?

3 A. If my recollection -- without looking at the
4 documentations, I believe so.

5 Q. And do you have coverage for yourself and for
6 your husband --

7 A. Yes.

8 Q. -- with your current employer?

9 A. Yes.

10 Q. Did you have coverage for yourself and your
11 husband at Lawns?

12 A. No.

13 Q. Would that be a major difference in the premium
14 payment?

15 A. This premium payment is based on single, not
16 family.

17 Q. But you do have family coverage?

18 A. Yes.

19 MS. DiBIANCA: And then let's actually
20 enter Butz 5, I believe it is, which will be the
21 Court's order, DI 100.

22 (Butz Deposition Exhibit 5 was marked for
23 identification.)
24

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 53

1 Lawns Unlimited.

2 Q. And tell me how we are trying to do that?

3 A. By taking single coverage and not family
4 coverage premium --

5 Q. But you do -- go ahead.

6 A. -- premium amount, and that was the
7 calculation.

8 Q. So you do have family coverage, is that
9 correct?

10 A. Yes.

11 Q. Do you currently pay more than what's listed on
12 here?

13 A. Yes.

14 Q. What do you currently pay?

15 A. It's terrible. I don't remember.

16 Q. Have you produced any pay stub relating to your
17 current employment?

18 A. Do I have any pay stubs?

19 Q. Have you produced any?

20 A. No.

21 Q. Why haven't you?

22 A. Judge's order.

23 Q. Did you request that you not be required to
24 produce them?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 54

1 A. Yes.

2 Q. And why did you request that?

3 A. It's not relevant to this case.

4 Q. Do you believe that it's relevant now?

5 A. Just to premium amounts.

6 Q. So thus far, as of today, you have not
7 produced -- just want to be clear -- you have not
8 produced any documents that would reflect either --
9 I'll do it one at a time.

10 As of today, you have not produced any
11 documents that reflect what insurance coverage you
12 receive from the Cecil County Government, is that
13 correct?

14 A. Correct.

15 Q. And then, sort of a similar question but I want
16 to separate it into two, as of today you have not
17 produced any documents that reflect your premium
18 payments for your current employer's health care
19 coverage, is that correct?

20 A. Correct.

21 Q. Have you produced any other documents that
22 reflect anything related to your current insurance
23 coverage?

24 A. I don't believe so.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 56

1 you --

2 Q. What documents would help you?

3 A. Documents from my house regarding my insurance
4 policies.

5 Q. So like the plan itself, would that --

6 A. Correct. The summary page.

7 Q. Do you know what your current co-payments are?

8 A. I should know this. If I can recall, I believe
9 it's 10 and 20.

10 Q. Reflecting what?

11 A. 20, I believe, is specialty. And 10 is
12 regular.

13 Q. And for prescription?

14 A. I don't remember offhand.

15 Q. Are you currently getting prescriptions filled?

16 A. Yes.

17 Q. Do you recall how much the co-pay was?

18 A. I believe, without looking at my receipt, I
19 believe it was 10 or 15.

20 Q. Do you need a referral to see a specialist on
21 your current plan?

22 A. I don't know without looking at it.

23 Q. What about emergency room visits, do you know
24 how much that would cost as a co-pay?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 57

1 A. No. I don't without looking at documentation.

2 Q. Have you been to the emergency room since
3 you've worked at Cecil County Government?

4 A. Yes.

5 Q. And when was that?

6 A. Several months ago I believe.

7 Q. Was it in 2007?

8 A. Perhaps.

9 Q. What was it for?

10 A. It was for -- gosh -- abdominal pain.

11 Q. Were you admitted?

12 A. No.

13 Q. Were you referred to a specialist?

14 A. No.

15 Q. Were you referred back to your primary care
16 physician for follow-up treatment?

17 A. Yes.

18 Q. You don't recall what the emergency room
19 service co-payment was then?

20 A. No, I don't.

21 Q. For your maternity care, how much is that
22 co-payment?

23 A. I think that one's 20.

24 Q. Who do you see for maternity care?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 59

1 MS. DiBIANCA: Certainly. Could you
2 actually read it back so we get an accurate
3 transcription?

4 (Record read.)

5 A. I believe so.

6 BY MS. DiBIANCA:

7 Q. You believe so. Do you have any doubt, or is
8 that a yes or unsure? I just want to be clear.

9 A. I have doubt.

10 Q. Tell me what your doubt is.

11 A. I don't know the law. I'm an accountant.

12 Q. Well, I'm very sure that I'm not really
13 referring to the law specifically. I'm just asking
14 you -- you calculated the damages. Based on what you
15 are now asserting as damages, how you got to the
16 figures that you got to based on however, you
17 determine them. If you were to use the same standards
18 and apply them under these circumstances, would you
19 have doubt?

20 A. Yeah. I do have doubt.

21 Q. Go ahead and tell me why.

22 A. I just -- without looking at everything black
23 and white and comparing everything, I don't know.

24 Q. Right. I agree. Definitely that's correct.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 60

1 I'm not asking you to determine whether they are
2 comparable or whether they are equivalent. All I'm
3 saying, if you determine later that they are
4 equivalent, in that case, would Lawns still owe you?
5 And that's one question.

6 The second question is, if your current
7 care is better than Lawns, under both circumstances,
8 would Lawns still owe you?

9 A. It would have to be a lot better.

10 Q. Tell me how?

11 A. Just better coverage -- I mean, I can't get
12 into more detail than that because I'm not an expert
13 in those types of things. I mean, I would have to
14 look at it line by line.

15 Q. I guess what I'm saying is, you're claiming
16 that you have health care coverage and you're claiming
17 now that, despite the fact that you have health care
18 coverage, that Lawns is still liable to you to pay
19 your health insurance premiums. So I'm trying to
20 determine how long that's going to go on into the
21 future. Are they going to be liable to pay your
22 health care premiums forever and ever and ever into
23 eternity? If you end up getting better much, much
24 better coverage and you are paying for it, should they

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 62

1 Lawns be liable for your choice to do so?

2 A. No.

3 Q. Tell me why.

4 A. Because they are not compatible.

5 Q. So it's based on comparable insurance coverage?

6 A. Correct.

7 Q. But at this time, you do not know whether or
8 not they are comparable?

9 A. Not without looking at my information.

10 Q. Tell me exactly what information you need to
11 determine that?

12 A. The insurance summary pages.

13 Q. And would you need an expert to testify on
14 that?

15 A. No.

16 Q. So if we had a summary page -- do you know what
17 a summary page generally includes?

18 A. Typically, yes.

19 Q. And what does it include?

20 A. Usually your breakdown of the co-pays and
21 deductibles.

22 Q. So that's what it will be, then, basically
23 based on co-pays and deductibles is how you would --

24 A. And out-of-pocket expenses.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 67

1 two summary pages and look at the co-pays, the
2 deductibles, and the out-of-pocket expenses, which I
3 will presume would be on both, we would be able to
4 make a valuation of which is the better plan, is that
5 correct?

6 A. We should, yes.

7 Q. I should in that there would be a reason why I
8 wouldn't be able to?

9 A. Well, you got to compare apples to apples.
10 That's what I'm just saying. I mean, one summary page
11 can have more breakdown, where the other one is more
12 generic. I mean, until we actually look at the
13 documentation, it's -- we can go back and forth all
14 day long on this.

15 So I will produce the summary pages from
16 my current insurance company, and then we'll go from
17 there.

18 Q. Have you compared the two already?

19 A. No.

20 Q. Then how did you determine that you are owed
21 the \$30 premium, approximately \$30 premium, if you
22 don't know if one is better or if they are comparable?

23 A. When this was submitted, it was on a time
24 factor, and I don't know the rules. I don't know how

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 68

1 calculations work. I was just going based on prior
2 documentation from the Courts and using that.

3 Q. Meaning what?

4 A. Using other people's cases to help me with my
5 case.

6 Q. What other people?

7 A. Just the Court's -- other court records. I can
8 not give you exact cases.

9 Q. Where did you get them from?

10 A. Through books.

11 Q. Where were the books?

12 A. At the library, on Google and Yahoo.

13 Q. What library?

14 A. Cecil County.

15 Q. Cecil County in Elkton?

16 A. Correct.

17 Q. What kind of books?

18 A. How to prepare for a case. How to be your own
19 attorney.

20 Q. So I think we are on the same page now in that
21 you did not compare the two summary pages or even the
22 plans generally, compare the Lawns plan to your
23 current plan, is that right?

24 A. Correct.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 69

1 Q. So you did get these numbers, roughly \$30. You
2 did get that from your HR department?

3 A. Correct.

4 Q. It is related to single coverage?

5 A. Yes.

6 Q. But past that, it's based on speculation, is
7 that correct?

8 A. Yes.

9 Q. And on Google and Yahoo, what did you look up?

10 A. You can actually type up cases, depositions.
11 You can find anything on the Internet.

12 Q. Did you find out something about depositions on
13 the Internet?

14 A. Yes.

15 Q. What did you find out?

16 A. How to prepare.

17 Q. And how did it say to prepare?

18 A. Stay calm.

19 Q. Anything else?

20 A. It's one-sided argument.

21 Q. That's how to prepare?

22 A. Pretty much.

23 Q. When I asked you earlier at the beginning of
24 the deposition what you did to prepare for the

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 71

1 talked about earlier in DI 107, marked today as
2 Butz 1, the various computations you've made for lost
3 wages, including earnings lost over time, vacation,
4 personal, time, holiday pay, and bonus pay.

5 If we can, can we just start with earnings
6 lost, which was the first one on the list? Can you
7 explain how you reached that number?

8 A. That was the amount that I would have been paid
9 if I was working at Lawns Unlimited minus the
10 unemployment amount.

11 Q. And what period of time does that reflect?

12 A. That -- without looking at my notes, I'm not
13 sure exactly.

14 Q. What notes are there?

15 A. It would be the stubs from unemployment.

16 Q. So that would be the document that you
17 produced?

18 A. It should be one of the documents, I believe.

19 Q. If you did submit that, would that have been
20 submitted with your initial disclosures?

21 A. Yes. If it was submitted.

22 Q. Well, do you have in your possession at home or
23 elsewhere -- not here with you today, but do you have
24 a copy of your unemployment pay stubs?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 72

1 A. I only have one, but I have the 1099 or
2 whatever they sent you.

3 Q. Did you submit that, the 1099?

4 A. I don't believe so.

5 Q. Why not?

6 A. I'm not really sure.

7 Q. Did you believe it was relevant?

8 A. I believe that defendant should have that
9 information.

10 Q. But without counselling you on the law, that's
11 irrelevant to whether or not you have copies of it.
12 So I'm just looking through your initial disclosure
13 documents, and there is nothing -- I'll represent to
14 you there is nothing here relating to unemployment.
15 I'll just finish it quickly, but it does not appear
16 there is.

17 So do you recall any documents that you
18 have produced reflecting unemployment payments you've
19 received?

20 A. Do I --

21 Q. I'm sorry. Do you recall what, if any,
22 documents have you produced relating to your
23 unemployment payments?

24 A. I believe -- I thought I included the one slip,

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 73

1 but I can get that information if it was not included.

2 Q. That would have been a pay stub?

3 A. It would have been the pay stub, yes. Slash
4 1099 or whatever form they call it.

5 Q. Did you produce copies of your tax returns?

6 A. No.

7 Q. Why not?

8 A. Because there's other information that is not
9 relevant to this case.

10 Q. Did you, in the library or on the Internet,
11 look up any information to determine what is relevant
12 to this case and what's not relevant to this case, or
13 did you just reach that conclusion on your own?

14 A. I don't remember looking that information up.

15 Q. So --

16 A. I -- go ahead.

17 Q. No. Go ahead.

18 A. Go ahead.

19 Q. DI 107, which we had looked at before,
20 number 16 that you read and reviewed earlier where you
21 objected to the request to the extent it's irrelevant
22 and based on the judge's ruling. That was your
23 response to when defendants requested information
24 about income, employment benefits, Social Security,

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 78

1 what you received at Lawns Unlimited, is that correct?

2 A. Like I said, I don't have that information. I
3 don't have pay stubs.

4 Q. So that is correct?

5 A. Correct.

6 Q. Just for clarity purposes, I'm not referring
7 only to pay stubs. I'm referring to anything. It
8 could be anything at all such as income taxes. There
9 is no documentation produced to show what you earned
10 at Lawns, not just limited to pay stubs, is that
11 correct?

12 A. Correct.

13 Q. Next on the list is overtime. Could you
14 explain that claim for me, please?

15 A. Mr. Fleming did not pay me some overtime that
16 was -- that I worked.

17 Q. A little more detail.

18 A. He subtracted it from my time sheet, which I
19 gave you a copy of, one of the copies.

20 Q. You produced --

21 A. But that happened more than once.

22 Q. So right now you're claiming more than one
23 occasion or you're claiming one occasion, total of ten
24 hours?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 86

1 A. Correct.

2 Q. Were there any other times that that happened?

3 A. That overtime was subtracted?

4 Q. Right.

5 A. Yes.

6 Q. When were those times?

7 A. Between the time that I was training which
8 would have been around October, even probably as far
9 back as September into December.

10 Q. So it occurred after you had copied the time
11 sheet, is that what you're saying, into December?

12 A. I believe so, if the time sheet was dated in
13 November, yes.

14 Q. You didn't print copies of those time reports?

15 A. I don't have those copies. I only made one
16 copy. Just once.

17 Q. Why did you think it is that you would have
18 been paid for some overtime and not for others?

19 A. I don't know.

20 Q. Did you do payroll?

21 A. Yes.

22 Q. So tell me how it is that you did payroll and
23 didn't pay yourself overtime?

24 A. Because I don't have the authorization to pay

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 87

1 somebody unless Ed signs off on it.

2 Q. So how would that work, you would submit a time
3 card or a generated time card and it would have a
4 certain amount of hours and then it would be literally
5 subtracted from that?

6 A. Correct.

7 Q. And your contention is that it was subtracted
8 because they did not want to pay you.

9 A. Correct.

10 Q. But they did pay you all other occasions?

11 A. Yes.

12 Q. Did anyone else not get paid for overtime?

13 A. Yes.

14 Q. Who were they?

15 A. Roberto Gonzales, also known as Raul Rodriguez.
16 There was times where Hugo -- there were times where a
17 lot of people out in the field didn't get overtime.

18 Q. How would you be aware of that?

19 A. Because I do payroll.

20 Q. And tell me, you're doing payroll but what's
21 the connection between you doing payroll, whatever
22 that means, and you actually knowing what someone
23 worked versus someone got paid?

24 A. Because they used the clock to clock in and

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 95

1 Q. Did all employees get vacation?

2 A. No.

3 Q. Who was entitled to vacation?

4 A. Office staff and Hugo and Mauricio.

5 Q. And office staff, was that because -- or were
6 they all full-time employees?

7 A. Everybody's full time.

8 Q. You said you got it when you started there.

9 How much? How much time did you get when you started?

10 A. I believe I got 40 hours of vacation time, and
11 then my two or three personal time.

12 Q. And different employers do it, I'm sure you
13 know, lots of different ways as far as when that time
14 accrues versus when you can use it. There when could
15 you use it, if you recall?

16 A. I used mine pretty much right away.

17 Q. Some employers will allow you to do that. And
18 some make you wait for a period of time. You were
19 eligible for use right away. Did you get more than
20 one week subsequent to that, or did it stay one week
21 vacation time?

22 A. What do you mean?

23 Q. I'm sorry. That wasn't very clear.

24 When you started your employment, you were

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 96

1 eligible for one week paid vacation, is that correct?

2 A. Correct.

3 Q. And then in year 2, did you become eligible for
4 additional time and vacation, in other words, more
5 than one week?

6 A. I don't believe so.

7 Q. So at the time that you left, you were still on
8 one week?

9 A. Yeah. Yes.

10 Q. Do you remember taking vacation time?

11 A. Yes.

12 Q. Do you remember when that was?

13 A. In February '03 -- no. February '03. Yeah.
14 February '03 and then again in September of '03?

15 Q. You took a full week both of those times?

16 A. No.

17 Q. You split it up?

18 A. Correct. I took four days or -- four days in
19 February. I took a week off, but only got paid for
20 four days. And then one day in September. I got paid
21 for that day in full.

22 Q. You took one vacation day in September that you
23 were paid for?

24 A. Yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 98

1 Q. Not employed by defendants in January '04?

2 A. Correct.

3 Q. And you did receive full compensation in 2003
4 for your paid vacation for that year, is that correct?

5 A. Correct.

6 Q. So the only unpaid vacation time that we are
7 talking about would be January of '04, is that
8 correct?

9 A. January of '04, yeah, for that year.

10 Q. How many days was it on the claim?

11 A. Five days.

12 Q. Oh, it is. Okay.

13 A. 40 hours for vacation.

14 Q. So it wasn't that you didn't -- sorry. I
15 shouldn't use too many negatives in one sentence.
16 Your claim is not that you -- I'm going to have to say
17 it again. Sorry. So strike that. We'll start again.

18 You don't assert that you were not paid
19 accrued but unused vacation in '03, is that right? I
20 know that's a lot of double negatives. I'll turn it
21 around. Do you assert that you were not paid for
22 accrued but unused vacation time in 2003?

23 A. Based on how I was getting vacation, I should
24 have been paid my vacation for 2004 starting in 2003.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 99

1 Q. So that is not what I thought, then. So we'll
2 have to go back. Go ahead and explain that to me.

3 A. Well, I was hired in November, and --

4 Q. That's when you became full time or that's what
5 you were hired as a temp?

6 A. I think that's when I went permanent.

7 Q. Okay.

8 A. To my recollection that I can recall, that's
9 when I went permanent.

10 Q. In November 2002?

11 A. Two.

12 Q. Okay.

13 A. And I got vacation the beginning of 2003.

14 Q. January?

15 A. February.

16 Q. February?

17 A. That's when I took it.

18 Q. When did you look become eligible for it,
19 though?

20 A. From my understanding it started right away.

21 Q. In November?

22 A. Yes.

23 Q. So from November -- I think I've got it now.
24 From November 2002 till November 2003, you had

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 101

1 calendar year?

2 A. That -- I believe so. I don't know.

3 Q. How would you know, when you were doing
4 payroll, how would you know whether or not to pay
5 someone for time they were off?

6 A. Mr. Fleming.

7 Q. Would --

8 A. Would notify me or let me know that they were
9 on vacation and pay them.

10 Q. You said you took in September one day. So I
11 presume that means that you could have taken
12 intermittent days. Employees didn't have to take all
13 five days consecutively; they could have taken one day
14 a month if that's what they wanted to do?

15 A. Yes.

16 Q. How is that different from personal days?

17 A. I think, if I can remember, personal days were
18 like sick days. They could be scheduled or
19 unscheduled.

20 Q. How would they accrue?

21 A. I believe they were the same way as the
22 vacation time.

23 Q. Run on the anniversary calendar based on your
24 day of hire?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 103

1 Q. Where was your doctor?

2 A. Three minutes down the street.

3 Q. What was his or her name?

4 A. It was Bayside ob/gyn.

5 Q. So all of your ob/gyn appointments, your
6 maternity care, or prenatal care, rather, are from
7 November to December 2003; you didn't take any days
8 off for that?

9 A. No.

10 Q. And no time off for other purposes?

11 A. Other than those days that I can recall at this
12 point.

13 Q. Other than what days?

14 A. It was the February and the vacation.

15 Q. But not from November to December '03?

16 A. Not that I can recall, no.

17 Q. And then holiday pay is next. Holiday pay,
18 eight hours, unpaid Christmas and New Year's Day.

19 Did you normally get paid time for
20 holidays?

21 A. Yes.

22 Q. Did you get your regular rate of pay or did you
23 get --

24 A. Regular.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 106

1 something similar?

2 A. To bonuses?

3 Q. Maybe I should clarify. Did other employees at
4 the end of the calendar year receive a bonus in the
5 form of cash or a gift certificate or anything like
6 that?

7 A. Yes.

8 Q. And who received that?

9 A. Pretty much everybody.

10 Q. And did they all receive the same thing?

11 A. Different amounts.

12 Q. Do you know why some people would receive more
13 or less?

14 A. That was Mr. Fleming's decision.

15 Q. Was it based on seniority?

16 A. I don't know.

17 Q. So you don't know how the he came up with the
18 number 395, plus \$100 gift certificate.

19 A. No.

20 Q. And it wasn't explained to you when you
21 received it?

22 A. No.

23 Q. How was it explained to you if at all?

24 A. Just a bonus.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 123

1 Q. Let's talk about your job duties, if you could
2 tell me about your job duties.

3 A. Answering the phone, collections, which is more
4 or less customer receive -- you know, customer
5 service, accounts receivable, accounts payable, and
6 getting the payroll together, and handling the taxes.

7 Q. Were you in charge of like the documents,
8 filing, things like that?

9 A. Filing, accounts payable.

10 Q. Okay. But not general office filing?

11 A. You have to get more detailed than that.

12 Q. The paperwork, were you filing papers that
13 weren't accounts receivable or payroll related?

14 A. Accounts receivable was pretty much in the
15 system. Sales office was responsible for the rest of
16 it. Payroll was just put in a file as their W2s or
17 not -- W4s.

18 Q. What about new hires, did their paperwork come
19 through to you at any time? That's what I'm talking
20 about, general office filing?

21 A. Their W4s was given to them by Ed, and then
22 they would give me the paperwork and it would be
23 filed.

24 Q. The employees would give them to you?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 124

1 A. No. It would be given to me by Ed.

2 Q. Any other duties that you had at that time?
3 Your duties, did they change? I should probably say
4 that first. Did they --

5 A. I oversaw those. Saw all that. Plus I was in
6 charge of the data, the computer conversion. But then
7 it didn't really change. I just took less
8 responsibility on when somebody else was hired.

9 Q. But the nature of your job didn't change; you
10 didn't have a different title or become promoted or
11 demoted or anything like that.

12 A. No.

13 Q. And your job title was -- I may have asked
14 this, and I apologize if I'm asking it again. Do you
15 recall what your official job title was?

16 A. Office manager.

17 Q. What would your interaction have been with the
18 employees, the non-office employees?

19 A. Just to make sure they gave me their work
20 orders.

21 Q. And work orders, they are like a time sheet,
22 like a work done report that they would fill out?
23 Would that be accurate?

24 A. It's -- yeah. Well, to be a little bit more

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 125

1 specific, on the actual form, it would be that they
2 went to client number 1 at this time and then client
3 number 2 this time and this is what they did there and
4 this is more or less job allocation form would be the
5 better term for it.

6 Q. And so they turned that in to you at the end of
7 the week?

8 A. At the end of the day.

9 Q. And what if someone didn't turn it that?

10 A. I would go looking for them the next day.

11 Q. Did that happen once in a while, regularly,
12 often?

13 A. Once in a while. They were pretty good about
14 it.

15 Q. Any other interactions that you would have had
16 with non-office employees?

17 A. If they came in and said hello, but that was --
18 because -- to the end of it.

19 Q. And your hourly rate when you left was how
20 much?

21 A. 12.

22 Q. I don't have it in front me, but would you
23 switch back to the first one, interrogatory responses?

24 A. This one?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 126

1 Q. Yes. I think if said 12.75. I thought it said
2 12.75 when you calculated time.

3 A. That's -- I was promised a raise at my review.
4 So that was based on the calculation.

5 Q. So you didn't actually earn 12.75?

6 A. No.

7 Q. When was your review?

8 A. That was October, November.

9 Q. That would have been an annual review?

10 A. Yes.

11 Q. So for concluding the November to November
12 year, anniversary year --

13 A. Yes.

14 Q. -- and you were promised a raise?

15 A. Based on what everybody else gets and based on
16 the excellent review, yes.

17 Q. Did anyone ever promise it to you?

18 A. Jeanne discussed it.

19 Q. And what was discussed?

20 A. She said she'll discuss it when she gets back.

21 Q. So the 12.75 figure, then, isn't, in fact, what
22 you were earning?

23 A. No.

24 Q. Then the health insurance was through what

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 127

1 organization? What was the insurance carrier?

2 A. With Lawns Unlimited.

3 Q. We are just on Lawns right now.

4 A. MAMSI or Optimum Choice, whatever they go by.

5 Q. And it's MAMSI, I think?

6 A. I think so.

7 Q. Was that a PPO, HMO?

8 A. I'm not sure how it was set up.

9 Q. When you said before PPO and POS, PSO, I don't
10 really know what that means.

11 A. I don't either. I just know the abbreviations.

12 Q. So it doesn't matter, then, at this point. I
13 just, don't actually know what that is.

14 Do you remember what your co-pays were,
15 deductibles were? I know we talked a little bit about
16 that before.

17 A. I can remember one of my co-pays being ten, but
18 I'm not sure the specifics.

19 Q. Dental insurance, did they carry that?

20 A. I don't remember.

21 Q. Life insurance?

22 A. I believe that -- yes.

23 Q. Was that paid for by Lawns?

24 A. Yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 128

1 Q. Do you have life insurance now?

2 A. Yes, I do.

3 Q. Is that paid for as well?

4 A. No.

5 Q. You pay for that?

6 A. Yes.

7 Q. Disability insurance?

8 A. I don't recall.

9 Q. Pension?

10 A. There was an IRA offered.

11 MS. DiBIANCA: Let's go to Butz 1 again.

12 I just have to find that.

13 What is that the DI number?

14 MS. YUEN: 47.

15 MS. DiBIANCA: That makes it easier.

16 Okay.

17 BY MS. DiBIANCA:

18 Q. So we are going to go to your response to
19 interrogatory number 6, which is on page 4.

20 Now, Lawns Unlimited, the insurance
21 coverage that you received there, was that what I call
22 employee only coverage? Do you know what I mean when
23 I say employee only coverage?

24 A. I understand.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 129

1 Q. Is that what Lawns offered?

2 A. Yes.

3 Q. So you were the only insured under that policy,
4 is that correct?

5 A. Yes.

6 Q. When, as a new employee, were you entitled to
7 insurance coverage at Lawns?

8 A. Effective immediately.

9 Q. There was no waiting period?

10 A. No.

11 Q. For any employee?

12 A. I don't know.

13 Q. What I'd like to do now is go through the
14 medical expenses that you list here on your response?

15 A. And go through the corresponding documents as
16 well. These are documents that you've already
17 provided. I just want to make sure I understand
18 what's being asserted.

19 MS. DiBIANCA: Let's make the whole pack
20 as one exhibit. So this is going to be Butz 8.

21 (Butz Deposition Exhibit 8 was marked for
22 identification.)

23 BY MS. DiBIANCA:

24 Q. You'll see that the P numbers, the plaintiff's

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 151

1 on there?

2 A. Yes, it is.

3 Q. That reflects what?

4 A. How much I paid on that specific a date and
5 what check number.

6 Q. So other than the ones that have an actual
7 credit card receipt, I don't actually have proof of
8 payment in here. All I have is invoices, is that
9 correct?

10 A. Correct.

11 Q. So when you said you were getting together
12 other documents?

13 A. I just received some more documents from the
14 doctor.

15 Q. Do they include proof of payment or just
16 invoices?

17 A. It was a summary with payment.

18 Q. Okay. So that would be a proof of payment,
19 sure.

20 A. Yeah.

21 Q. So if you go towards the end of the packet, I
22 believe it's the fourth from the end. It's a Bayside
23 Health Association invoice. The P number is P67.

24 A. Okay.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 152

1 Q. It says on the right-hand, sort of bottom side,
2 previous balance, insurance and patient. If you're
3 not able to remember or understand, please, you know,
4 don't guess. I'm just wondering if you can provide me
5 with more information than what this is.

6 I believe -- let me see. Let's take a
7 look.

8 A. I'm not sure what that bottom stuff is, but I
9 know what the form is.

10 Q. Okay. The form is what?

11 A. It's when you go for a check-up. This is the
12 form that the ob/gyn used to fill out, and you would
13 have to give to the women for billing.

14 Q. So on your list, DI 107, it says you submitted
15 February 11, 2/11/04, Bayside Health, ob/gyn,
16 postpartum visit, \$15, paid?

17 A. Correct.

18 Q. And then that is one of the amounts that's
19 blank. So where on this does it say, "paid 15"?

20 A. It just says P, pay, next to it.

21 Q. What does that mean?

22 A. I'm not sure. But when I walked in there, I
23 had to pay at least that amount.

24 Q. So that this doesn't reflect payment, is that

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 153

1 correct?

2 A. Correct.

3 Q. So if you put \$15, does that mean that your
4 co-pay was at least \$15? Is that what you are saying?

5 I mean, we don't have any basis whatsoever
6 right now to correct the \$15 on your chart to this
7 record at this time. Is that right?

8 A. I would have to guess, yeah, that \$15 would
9 have been some type of co-pay.

10 Q. But we don't know; you don't know, is that
11 right?

12 Do you have any documents for it at this
13 time?

14 A. For this specific one?

15 Q. Yes.

16 A. No. I don't have any documents on me.

17 Q. And any documents that you've already
18 submitted?

19 A. Not for Bayside.

20 Q. And then the previous page in that same exhibit
21 is another Bayside bill, and that's dated January
22 14th. And that looks like exactly the same type of
23 thing, and you have on DI 107, for 1/14, you list
24 Bayside again and again list paid as \$15. But that

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 159

1 Q. Even on your chart there's no description on
2 the table, right?

3 A. I don't see it there.

4 Q. So we have -- and this is not signed, this
5 receipt, correct?

6 A. Doesn't look like it.

7 Q. And it looks like it's your husband's credit
8 card, is that correct?

9 A. Yes.

10 Q. So we do have a payment for Dr. Funk in the
11 amount of \$65, but we do not know for what patient or
12 for what services rendered, is that correct?

13 A. Correct.

14 Q. Did the insurance reject your prescription
15 medicines?

16 A. Yes.

17 Q. Tell me about that.

18 A. When I went to go get birth control on February
19 1st, it was declined.

20 Q. It would have been declined as of February 1st.
21 I'm with you. What about before February 1st?

22 A. I don't recall.

23 Q. Well --

24 A. I don't think I had prescription before that.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 160

1 Q. Well, you do. You have them listed here.
2 January 1st, January 1st, January 4, January 4. And
3 you only paid a few dollars for each of them. So I
4 assume that the medicine actually cost more than that,
5 more than four or five dollars per prescription, but
6 it was submitted at that time to the insurance. And
7 has the insurance since then come back and said,
8 "Actually, you weren't covered"? Like you are now
9 saying or doing with Dr. Funk or any other doctor?

10 A. No.

11 Q. Do you think that's because you were actually
12 covered?

13 A. It depends on when Mr. Fleming actually
14 cancelled my insurance.

15 Q. Well, based on the prescription drugs, would
16 you say it's fair to assume that you were still
17 covered as of January 4 of 2004?

18 A. If he made the phone call after January 4th --

19 Q. That's not what I'm asking. I'm saying, based
20 on the fact that you only had to pay less than \$5 per
21 prescription, is it fair to assume you were covered by
22 insurance?

23 A. Assume, yes.

24 Q. Is there any reason to not believe that?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 161

1 A. Don't know.

2 Q. I mean, it's not a trick question. I mean,
3 honestly, have you ever heard of any prescription
4 medicine that cost less than \$5 without any insurance
5 coverage?

6 A. Some of my medicines can cost under \$5.

7 Q. With no insurance coverage?

8 A. Yes. Because I picked up a prenatal that was
9 pretty inexpensive.

10 Q. Okay.

11 A. But I would have to guess probably it was
12 covered. I don't know.

13 Q. Probably it was.

14 How would we find out whether or not it
15 was? You're saying it wasn't. I assume you're saying
16 it wasn't based on the fact that you're assessing
17 damages for it?

18 A. Yes.

19 Q. How do we find out that it wasn't?

20 A. I guess you have to call insurance company.

21 Q. Didn't I ask that in the interrogatory
22 question?

23 Didn't I ask in number 8 on page 4 of 10
24 pages in document 107 marked as Butz 1, "Identify and

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 166

1 Q. Did you give me Dr. Funk's statement?

2 A. I just got that recently.

3 Q. When did you get Bayside Health?

4 A. I'm sorry?

5 Q. When did you get the statement from Bayside
6 Health?

7 A. Several months ago. Maybe longer than that. I
8 attached it to the back-up that I gave you.

9 Q. That would have been your initial disclosures,
10 then. So Bayside Health has not notified you that you
11 owe them, is that correct?

12 A. That's correct.

13 Q. Why do you think that is?

14 A. Well, I owe them a huge balance, so they could
15 have wrapped it in with that balance.

16 Q. What was the balance for, the huge balance?

17 A. A tubal pregnancy.

18 Q. That was prior to on January '04?

19 A. Correct.

20 Q. So that's a -- that's why I'm asking. So prior
21 to January '04 you already had moneys owed with
22 Bayside Health?

23 A. Correct.

24 Q. So then they haven't come back and said the

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 176

1 A. Yes. Which, again, I got that statement, so I
2 can submit that to you.

3 Q. And then the next one is Bayside Health for
4 January 14th, \$15. And we don't have a proof of
5 payment for that at this time.

6 A. No.

7 Q. Birth control from Happy Harry's on 2/1, I
8 believe we did have a receipt for that?

9 A. Yes. P6.

10 Q. And P6 indicates that it was a pharmaceutical
11 in the amount of 30.75 and in the page, P20, put that
12 together and you can see it's for you from Happy
13 Harry's. Yes?

14 A. Yes.

15 Q. Then the last one is Bayside Health, \$15, and
16 that we don't have a proof of payment for at this
17 time.

18 A. Correct.

19 Q. And then we stop there because the next one is
20 into April, and as we discussed earlier, you're no
21 longer requesting April damages, correct?

22 A. Correct.

23 Q. So, Ms. Butz, I just want to -- without doing
24 horrific math, as of today you have submitted proof of

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 177

1 payment for approximately \$40. Is that how you
2 understand it?

3 A. Yes.

4 Q. Do you have any other reason to believe such as
5 any document from MAMSI or Optimum Choice that makes
6 you think you didn't have insurance coverage? And the
7 letter -- I'm sorry. I'll clarify. And the letter
8 that you received from Lawns Unlimited saying they
9 were going to cancel your insurance. Anything else
10 that makes you think you were not covered?

11 A. A letter from -- just the three letters that
12 all together I got from the insurance company, and
13 then one from Mr. Fleming.

14 Q. And the three letters, that was one that we
15 moved in as the exhibit that you were referring to,
16 Butz 9, I think?

17 A. There was two like that plus another letter the
18 same way my insurance was cancelled.

19 Q. Would they have been before that or after that
20 letter we just reviewed?

21 A. I'm sorry?

22 Q. Would they have been before or after the letter
23 we just reviewed?

24 Here's why I'm asking. It's not a trick

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 178

1 question by any means. I have a letter that looks
2 very much, I think, like the one we just looked at,
3 dated in February, but I don't have any bills that
4 were attached to it. So it's actually one of my
5 questions to ask you is, what the heck does this mean?
6 I give this to you, and if it's relevant we can move
7 it in.

8 A. I would have to look at what it's attached
9 to -- on my records, but these were things that were
10 paid in the December of '03 stuff.

11 Q. And just because I want to make the record
12 really clear, could you tell us the little numbers,
13 the Bates numbers at the bottom of the page, like a P
14 or D?

15 A. Oh, P91 or P92.

16 Q. And they are, just for the record, if you could
17 explain --

18 A. Explanation codes for MAMSI. And it just
19 indicates -- this one indicates the claim has been
20 reviewed by the union. Claim was paid in accordance
21 to your contract. These expenses were applied to
22 member's plan deductible.

23 And then this one, P92, co-payments
24 greater than or equal to requested allowable amount.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 179

1 No payment is forthcoming from the health plan.
2 Member may be billed the co-payment only. This claim
3 is paid in accordance with your contract. Our
4 discount has been taken. Member may not be billed for
5 discount or contractual allowance.

6 Q. Are those the ones that you're referring to?
7 You said you had other letters that made you think
8 insurance was cancelled?

9 A. No. There was two letters like this one.

10 Q. Like B or Butz --

11 A. Butz 9, page 1.

12 Q. 2?

13 A. 2?

14 Q. Yeah.

15 A. And then there was another one that indicated
16 my actual insurance was cancelled.

17 MS. DiBIANCA: Let me see here.

18 This is the one that we just looked at, so
19 I'm going to turn that. I have two more letters. So
20 I am going to remove these altogether. Well, we'll
21 move those two. So this as Butz 10.

22 (Butz Deposition Exhibit 10 was marked for
23 identification.)
24

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 182

1 we take them and we scan them in as they come to us.
2 We don't sort or put them in chronological order.
3 That's what we do with my documents. But because
4 they're yours, we don't change the order. We preserve
5 them. So in other words, 94 and 95, came to me
6 together. And they were pages before and pages after
7 and they perhaps were in there but they weren't
8 attached to these. So you know for your reference.
9 Okay.

10 So the other letter we don't have at this
11 time, but you actually think it's in --

12 A. It should be -- it looks typed.

13 Q. I'm with you. And we'll look for that. You
14 think that was submitted?

15 A. Yes.

16 Q. What about bills from Beebe Medical Center,
17 have you been contacted to pay any of those?

18 A. No.

19 Q. I should put in context, Beebe is where you had
20 your daughter.

21 A. Correct.

22 Q. And did you actually tender payment for the
23 services related to her birth?

24 A. I'm sorry?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 183

1 Q. Did they charge you money for when you checked
2 out?

3 A. I never got anything from them.

4 Q. So if you weren't covered, you believe your
5 coverage ended on --

6 A. The 31st.

7 Q. Of December and you gave birth --

8 A. December 30th.

9 Q. Okay. So you would have had coverage for less
10 than, I suppose, 24 hours after the birth? Is that
11 what you believe at this time?

12 A. Yes.

13 Q. And then when did you check out of the
14 hospital?

15 A. January 1st.

16 Q. So you believe there was, at least, I guess a
17 day. Was there one or two days of you being in the
18 hospital after you lost coverage?

19 A. I left January 1st.

20 Q. So there would have been no services rendered
21 on the 1st?

22 A. Not that I recall.

23 Q. Well, knowing the hospital, knowing that they
24 charge you like \$30 an aspirin, I mean, I would assume

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 184

1 there was some costs relating to the 1st even if all
2 they did was push you in a wheelchair out the door?

3 A. I've never gotten anything.

4 Q. Nothing from them. Okay.

5 MS. DiBIANCA: I'm going to actually take
6 a break so we can go off.

7 (Discussion off the record.)

8 (Whereupon an adjournment was taken herein
9 until August 30, 2007, at 9:00 a.m.)

Butz v. Lawns Unlimited, Ltd. and Fleming

Page 189

1 ALSO PRESENT:

2 SHAINA CARL
3 Young Conaway Stargatt & Taylor, LLP

4 MICHAEL BUTZ

5 -----

6 RENEE M. BUTZ,
7 the witness herein, having first been
8 duly sworn on oath, was examined and
9 testified as follows:

10 EXAMINATION

11 MS. DiBIANCA: Welcome back. We are on
12 day 2 of Plaintiff Renee Butz's deposition.

13 In the room today are myself, Margaret
14 DiBianca for defendant Lawns Unlimited and Edward
15 Fleming. Here with me are Shaina Carl as well as
16 Edward Fleming, and our court reporter. Renee Butz is
17 in attendance and so is Michael Butz with the
18 plaintiff.

19 Welcome back. We are going to sort of
20 finish where we left off yesterday and then carry on
21 and hopefully wrap up as quickly as possible.

22 BY MS. DiBIANCA:

23 Q. Do you remember all the instructions that we
24 discussed yesterday? Would you prefer that I go over

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 198

1 Q. And can you tell me how you came to reduce the
2 figures?

3 A. Because I reduced it down to March of '04.

4 Q. The time period?

5 A. For the medical bills.

6 Q. And can you tell me why you did that?

7 A. Because that's when I didn't have insurance.

8 Q. So initially you had claimed medical expenses
9 up through, it looks like, 2006?

10 A. Correct.

11 Q. And then subsequently you eliminated any
12 medical expenses after March of 2004, is that correct?

13 A. Correct.

14 Q. And you did that because the medical expenses
15 could be charged to your current insurance, is that
16 right?

17 A. Correct.

18 Q. And the items listed in the right column here
19 under total amount on page 4, it says medical bills
20 with insurance, and then you list, starting in April
21 of 2004, and then in the total amount there's figures
22 there. Are those moneys that you had paid or are
23 those moneys of the total bill?

24 A. It says without insurance, but it was just a

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 199

1 total amount of the bill. It doesn't indicate how
2 much I paid out of pocket. It just was a total
3 amount.

4 Q. And then that's the same for the medical bills
5 without insurance and the medical bills with
6 insurance?

7 A. Correct.

8 Q. Now, under the second entry on the list is
9 12/30/2003, Bayside Health, C-section, \$3,500. Then
10 underneath that is two entries for Beebe Medical
11 Center for hospital expenses, I suppose relating to
12 your delivery, roughly 6500 and 1700 dollars. Are
13 those related to the birth of your daughter?

14 A. Yes, it is.

15 Q. And what happened to those? You're no longer
16 requesting those bills, that amount, right?

17 A. Beebe was completely paid for.

18 Q. By?

19 A. By the insurance. Insurance wasn't cancelled
20 until December 31.

21 Q. So the insurance has since paid for all those
22 expenses on 12/30/03?

23 A. Correct.

24 Q. I'm back on page 3. There is also a list of

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 201

1 mouth. So would it be fair for me to say that you're
2 no longer seeking damages, these wages for the time
3 that you were employed, when you became employed with
4 Cecil County Government, and that's why?

5 A. The 2003 is basically my difference of when I
6 was employed with Lawns Unlimited to Cecil County
7 Government. From 2004 on, they are more or less
8 comparable. They are a wash.

9 Q. They are a wash to what? The two employments,
10 you mean what you would have earned?

11 A. Correct. As far as the wages are concerned.

12 Q. What do you earn at Cecil County Government?
13 Are you a salary or hourly?

14 A. I'm an hourly employee.

15 Q. What do you earn there?

16 A. Now or --

17 Q. Now.

18 A. Now, I -- oh, my gosh.

19 Q. Are you having a hard time recalling?

20 A. I do.

21 Q. How about when you started in 2004, 2003?

22 A. 2003, I believe I started at 12.75.

23 Q. So, because you earned actually more at Cecil
24 County Government than you did at Lawns Unlimited and

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 205

1 Q. Did you ever get like a handbook or some kind
2 of employment policies?

3 A. No.

4 Q. Did you ever see one of those?

5 A. No.

6 Q. If someone had a question about that, about the
7 use of vacation time or personal time, who would they
8 go to to ask?

9 A. Jeanne or Ed.

10 Q. And did you have to seek approval before you
11 used personal time?

12 A. Verbally, unless you called out sick.

13 Q. Mm-hmm. And you would get approval from who?

14 A. Jeanne or Ed.

15 Q. And vacation time, was that the same? How did
16 you get approval for that?

17 A. It could be done verbally.

18 Q. Were you going to say or? You said you can do
19 it verbally. Can you do something else?

20 A. The guys out in the field were -- had to use
21 some type of form, but that was never really enforced.

22 Q. What type of form?

23 A. Some type of vacation request form.

24 Q. Are you saying some type because you're just

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 211

1 A. First there was one girl, and I can't honestly
2 remember her name. She didn't stay very long.

3 Q. Okay?

4 A. Then there was Laurie Schaltz. Then there was
5 Dina Alderucci. And then Debby Watson.

6 MS. DiBIANCA: Let's do Butz 13.

7 (Butz Deposition Exhibit 13 was marked for
8 identification.)

9 BY MS. DiBIANCA:

10 Q. I'm just going to have a look at that, if you
11 will. Then let me know when you've familiarized
12 yourself with it.

13 All set?

14 A. Mm-hmm.

15 Q. Yes? You said you've looked over Butz 13?

16 A. Yes.

17 Q. Can you tell us what it is for the record?

18 A. It's called agenda for employee meeting.

19 Q. Have you seen this before?

20 A. Yes.

21 Q. Where did you see it before?

22 A. This was typed up probably by myself and
23 another lady. It was typed up by me and Laurie.

24 Q. Do you recall when?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 239

1 Q. Then after you received the letter?

2 A. I didn't get the letter until the 14th.

3 Q. So let's say January 14th you received the
4 letter, and how do you remember that date?

5 A. Approximately.

6 Q. Well, why do you say January 14th?

7 A. Because I know I didn't get it anywhere during
8 that period of time.

9 Q. Between January 7 and 14? You said that period
10 of time.

11 A. I know I didn't get it right after January 7th.

12 Q. How do you know that?

13 A. Because it's -- I had to sign for it. So
14 Mr. Fleming would have records for it of when I
15 actually got it.

16 Q. But I'm just saying you said January 14th, so
17 I'm trying to determine how that number comes to you.
18 Do you actually recall receiving it, or you do not?

19 A. I remember signing for the letter. And it's
20 approximately dated January 13th or 14th. 14th is
21 sticking at my head.

22 Q. All right. Fair enough. That's all I'm
23 asking.

24 And then so January 14th, 15th, 16th, any

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 253

1 Q. So it wasn't that you checked in with a
2 different name, but the insurance coverage, is that
3 sort of --

4 A. Yeah. You have to check in by the name that's
5 on your insurance policy.

6 Q. Punitive damages, are you seeking punitive
7 damages?

8 A. Yes.

9 Q. In the amount of \$50,000?

10 A. Yes.

11 Q. Can you give me some information about now you
12 came to conclude that amount?

13 A. That was the maximum.

14 Q. It is? Interesting.

15 How did you find that out?

16 A. I had an attorney that -- I've talked to
17 several different attorneys, and if it was a big
18 corporation, they would be lined up taking the case.
19 But because he's a small company, it's not enough
20 money for him.

21 Q. For who? I'm sorry.

22 A. For the attorney.

23 Q. For a specific attorney?

24 A. For all the attorneys. It's just not enough

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 264

1 the maximum punitive.

2 Q. What's the behavior or the conduct that you're
3 claiming occurred to justify punitive damages, not
4 necessarily tied to an amount but just generally
5 speaking?

6 A. I was wronged, you know. There's small
7 companies across this country that break the laws
8 every day. They need to be punished but because they
9 are not big corporations, people can't afford to fight
10 them. Well, he needs to be stopped on the rest.

11 Q. Mr. and Mrs. Fleming, you knew them personally
12 and professionally?

13 A. I knew them professionally. And I guess you --
14 I thought I knew them personally.

15 Q. Did you go out with them, hang out with their
16 family, things like that? This is what I'm looking
17 for, sort of the contact for --

18 A. They were invited to my weeding. They were
19 invited to my baby shower. I slept in the same bed
20 with their children on a business trip.

21 Q. You knew their children?

22 A. I did know their children.

23 Q. I don't mean sort of, you know, very, very
24 well, but you knew them, you've met them before

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 268

1 Mr. Ed Fleming is also a named defendant. So
2 generally speaking, the Flemings.

3 They knew you were pregnant, correct?

4 A. Oh, yes.

5 Q. They knew when you were due, correct?

6 A. Yes.

7 Q. And when were you originally expected to be
8 due?

9 A. Approximately January 5.

10 Q. And they knew that you were going to take
11 maternity leave?

12 A. Correct.

13 Q. And they knew that your maternity leave you
14 expected to be out for six weeks?

15 A. Yes.

16 Q. And they knew that maternity leave was not a
17 paid leave, correct?

18 A. Except for the vacation that I was holding,
19 waiting for.

20 Q. Okay. But it wasn't --

21 A. The whole six weeks was not going to be paid.

22 Q. There was no such thing as paid maternity
23 leave?

24 A. Nothing that I know of, no.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 269

1 Q. I just think, because we can probably get this
2 stuff on the record that's not in dispute and instead
3 of sort of haggling over it and all that nonsense. So
4 we are all in agreement up to that point.

5 Then you leave work. Tell me what
6 happens. Sort of December 23. My understanding is
7 December 23, but if that's incorrect, let me know.

8 A. December 23 I woke up in the morning and I
9 thought my water broke.

10 Q. And you're living in Wilmington or the greater
11 Wilmington area?

12 A. Yes.

13 And it was like, oh, I don't know. My
14 husband is like, go to the hospital. So I was like,
15 well, I'm just going to go to Beebe. That was where
16 my doctors are from. I'm not contracting. I don't
17 feel these types of things, but I just had a gush of
18 water. Being the first child, don't know what the
19 heck is going on. So I go down there. They indicated
20 my mucus plug came out. And don't ask me what a mucus
21 plug is. I have no idea. That's what I was told.

22 Q. What time was this on the 23rd by the time you
23 got to Beebe?

24 A. Around seven-ish. And while I was going down

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 270

1 there, I called Jeanne and told her the situation.

2 Saying, "I'm going to the hospital. I think my water
3 broke. I might night not come in. Don't know."

4 Q. Stand by?

5 A. So I went there. That was when they told me my
6 mucus plug came out. But I was only dilated slightly,
7 to go home.

8 So I went to work because I knew it was --
9 I think it was payroll week. And so I was like, oh,
10 got I got to get stuff done. So I wanted to wrap up a
11 whole bunch of other things before I went out on
12 maternity leave, you know, just my loose ends to make
13 sure everything was good and everybody understood.

14 Q. What time did you get to work?

15 A. I think it was around eight-ish, maybe a little
16 after. I wasn't at the hospital very long.

17 Q. How far is Beebe from Lawns?

18 A. Five, ten minutes if that.

19 Q. So you were at Beebe for less than an hour?

20 A. Yeah.

21 Q. So 8:00 o'clock. You get to work. Go ahead.

22 A. I told everybody the situation.

23 Q. Who's everybody?

24 A. Mr. Fleming and Debby.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 271

1 Q. And you told them in person?

2 A. Yes.

3 Q. At 8:00 o'clock?

4 A. Yes.

5 Q. Okay.

6 A. And I called my husband, and you know, he's
7 like, you know what? You really should come home.
8 You don't know when you are going to go into labor. I
9 was, that's a good idea. I don't want to be driving
10 and going into full-fledged labor and get in a car
11 accident.

12 Q. Were you planning on giving birth?

13 A. In Beebe.

14 Q. Okay. Go for it. I'm sorry.

15 A. That's okay. So I didn't want to drive any
16 more. So he came -- my mother and -- because I had my
17 car there. My mother and my husband came to pick me
18 up around, I would say, 1:30, 2:00 o'clock I guess.

19 Q. Okay. 1:30, 2:00 o'clock.

20 A. And Mr. Fleming was actually leaving shortly
21 before that, and he was like, you know, if you need
22 anything just, you know, holler.

23 Q. Right. Right.

24 A. And I said okay. You know, my in-laws had --

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 279

1 work, right?

2 A. He asked me why I wasn't there yet.

3 Q. Okay.

4 A. I once again told him I can't drive and once
5 again we went kind of into the same situation as the
6 23rd.

7 Q. Okay.

8 A. And that's when he said that, you know, well --
9 you're not coming back. And I kept saying, "I give
10 you my word. I give you my word."

11 Q. Did he say why he felt that?

12 A. I don't know if I can pinpoint. I don't
13 remember him -- I don't remember if he said anything
14 like that. I just remember him saying that, you know,
15 "you're not coming back."

16 Q. And you just said, "Yes, I am." Your husband
17 said, "Oh, yes, she is." And then that also ended
18 pretty amicably I guess.

19 A. Pretty peacefully, yes.

20 Q. That's 7:00 a.m., and then what happens?

21 A. Then the 26th, Mr. Fleming called for a
22 computer question. I talked for about 15, 20 minutes.

23 Q. That was peaceful also?

24 A. That's very peaceful. Nothing was said about

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 283

1 still a little nervous.

2 Q. And two subsequent phone calls and everything
3 was fine, right?

4 A. Yes. There was no screaming, no yelling. It
5 was all business talk and just --

6 Q. Pleasant?

7 A. -- pleasant.

8 Q. So you were worried but not because anything
9 had happened subsequent to the 24th, is that right? I
10 want to make sure sort of what your thoughts were as
11 far as uh-oh. When did you say uh-oh, when you got
12 the letter?

13 A. When I got the letter, I was devastated. But
14 in back of my mind I was like, you know, I've seen
15 Mr. Fleming blow up, and I've seen him be very
16 manipulative to employees. So I was hoping that I was
17 not going to be that type of person that he was going
18 to do that to.

19 Q. That's exactly what I'm asking. Did you have
20 any reason to think that, based on the way the
21 conversation ended the 24th and then your two
22 subsequent phone calls, did that give you any
23 indication that there was going to be major problems?

24 A. There was a little doubt in my mind, but for

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 284

1 overall I really didn't think that this was going to
2 happen.

3 Q. That's why you would have called and left a
4 message with the baby's measurements and, you know,
5 the baby was born?

6 A. Yeah. I mean, why else would I have called? I
7 was being pleasant. If I wasn't going to be pleasant,
8 I would have never called him back and give him help
9 with his computer question. I would have been like F
10 you.

11 Q. That's exactly what I'm saying. There was no
12 sort of hostility on your end in the sense what you
13 called them and let them know the good news,
14 et cetera, right?

15 A. Yes.

16 Q. That's all I'm trying to find out, sort of when
17 everything happened. It seems like the letter, that
18 was the trigger, is that pretty fair?

19 A. Yeah.

20 Q. So you get the letter. Then what happened?

21 And the letter we've already admitted. So
22 we know what that is.

23 A. I was devastated. I cried and cried and cried.

24 Q. Why did you cry, without stating the obvious

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 285

1 just because it's important we get it all on paper?

2 A. Well, you know, they treated me like family,
3 and you know, you don't screw your family.

4 Q. Prior to the letter you mean, they had treated
5 you like family?

6 A. Yes. I mean, like I told you I slept in the
7 same bed with their children on a business trip.
8 That -- you're not -- that's a big no-no. You don't
9 do that. So, you know, I was treated like family.
10 You know, I was treated like one of their children.

11 Q. So that's why it's especially hurtful, correct?

12 A. It was very hurtful.

13 And so, then, that's when Michael Butz
14 contacted him because I called him crying, going "I
15 don't know what to do." And he called him up and, you
16 know, he was like "just give her her job back. You
17 know, just give her her job back."

18 Q. Were you on the phone with -- was this a
19 three-way phone call?

20 A. No, it was not.

21 Q. It was just Michael Butz, and was it
22 Mr. Fleming?

23 A. Yes.

24 Q. When was that, same day as you received the

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 286

1 letter.

2 A. No. Probably -- I'm assuming it would have
3 been the next day.

4 Q. Did you ask your father-in-law to call and see
5 if he could work things out?

6 A. Yes. He's more calm and collected than I am.

7 Q. Because did you think that it was a
8 misunderstanding? I mean, what did you think?

9 A. I didn't know what to think, to be honest with
10 you.

11 Q. What was sort of the purpose of him calling?

12 A. Because I would have exploded on Ed.

13 Q. I understand that, but what was the objective?
14 Was it to --

15 A. He's a businessman.

16 Q. Right.

17 A. So I figured a businessman, who's not
18 emotional, talking to another businessman could come
19 to real --

20 Q. Realization?

21 A. Yes. Thank you.

22 Q. So were you hoping he would be able to
23 straighten out the record or, you know, the
24 relationship or the facts as they understood it? Were

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 287

1 you hoping that he would say, "Rip up the letter. I'm
2 sorry. We were wrong. Of course, she's coming back"?
3 I just want to know what is the objective?

4 A. To get my job back. To get the insurance
5 reinstated. And happy, merry could be. I go back to
6 work.

7 Q. So Mr. Michael Butz called. Were you in the
8 house when he called? Were you in the same location?

9 A. No.

10 Q. So you didn't hear the telephone call?

11 A. No, I didn't.

12 Q. Then, based on what he told you then, how did
13 the telephone call go?

14 Sorry. When did he tell you about the
15 telephone call, right after it?

16 A. I believe so, yes.

17 Q. Sorry. Go ahead.

18 A. That's okay. He, you know, he called me back.
19 He said that the only way that Mr. Fleming would give
20 me my job back is if I signed a labor contract and
21 that he was not going to reinstate my insurance or my
22 job unless I signed the labor contract.

23 Q. What is a labor contract? What did you
24 understand that to be?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 288

1 A. I had no clue what a labor contract is. I've
2 never -- the only thing I've ever heard of a labor
3 contract is if you're making six figures.

4 Q. So he didn't say, "This is what it would say."
5 He just said "a labor contract"?

6 A. He just indicated -- I don't think specifics.
7 I think it was something I had to work there for so
8 long or something of that nature. But I did not agree
9 to those terms of me coming back.

10 Q. Then what happens?

11 A. That was the end of it. That's when I decided
12 that there was no way that it was going to be possible
13 for me to go back to Lawns Unlimited and that was when
14 I did the unemployment, looked for a job, and went to
15 the DDOL with the letter.

16 Q. After Michael Butz talked to Ed Fleming, did
17 you ever talk to Ed Fleming?

18 A. No.

19 Q. Did Michael Butz talk to Mr. Fleming after
20 that?

21 A. I don't believe so. I think it was just that
22 one conversation.

23 Q. And then the next time you saw Mr. Fleming
24 would have been at the unemployment board?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 289

1 A. No. I actually -- I couldn't take off my brand
2 new job. So they said I could teleconference.

3 Q. When was the next time you saw him?

4 A. I think today.

5 Q. Yesterday?

6 A. Or yesterday.

7 Q. And let me see. Anything that I missed in the
8 facts there as far as the timeline goes? Any other --
9 like did your husband call him, did your mother call
10 him, anything like that?

11 A. No.

12 Q. So the only communications there were after the
13 letter was with Mr. Michael Butz?

14 A. Correct.

15 Q. Did you ever speak to Jeanne Fleming during
16 that time?

17 A. Not the 23rd or 24th. Seven in the morning on
18 the 23rd when I called, when I was going to the
19 hospital, but I don't believe I talked to her any
20 other time.

21 Q. Did you consider reaching out to her when you
22 got the letter?

23 A. No.

24 Q. Why not?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 291

1 A. You know, he indicates it was a sudden leave of
2 absence, which being pregnant is not really sudden.

3 Q. Definitely not.

4 A. You know, fellow co-workers told him that I
5 wasn't coming back.

6 Q. Now, is this the first time you had heard about
7 this, that he states, "Our greater concern is you told
8 fellow co-workers that you never had any intentions of
9 returning at all from your maternity leave." Is this
10 the first time you had gotten that information?

11 A. Unless he might have said something on the
12 24th, this is when he actually came out and said
13 fellow co-workers.

14 Q. Were you stunned by that?

15 A. I was shocked.

16 Q. Did you have any idea who he was referring to,
17 or did you conclude who you thought he was talking to
18 about?

19 A. I concluded, but I wasn't really sure who he
20 was talking about. I had an idea maybe.

21 Q. You thought it was --

22 A. Debby.

23 Q. And it turned out that that was, in fact, who
24 it was?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 292

1 A. Yes.

2 Q. So you were correct. Okay.

3 So he says your co-workers say you told
4 them that you never had any intensions. Okay.

5 A. And that I accepted another job.

6 Q. Okay.

7 A. He feels, you know, at this point "I feel I
8 must make a professional employment decision based on
9 the information, and I have determined to terminate
10 your employment with Lawns Unlimited effective on
11 December 23rd. When you left the premises and
12 cleaning out your desk and taking all your belongings
13 and" --

14 Q. Did you ever call Debby Watson, knowing or sort
15 of suspecting and then later finding you were --

16 A. I might have called her and yelled at her.

17 Q. Would you have called her at work or at home?

18 A. I don't recall.

19 Q. Did you ever call her at home?

20 A. I might have.

21 Q. Do you think you had her home telephone number?

22 A. I might have had it programmed at one point in
23 my phone because I sometimes -- I think I had some
24 people programmed in my phone. I'm sorry.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 293

1 Q. Okay. That's fine.

2 So you did or you may have, I suppose, is
3 that correct, called her?

4 A. Yes.

5 Q. And would that have been, I guess after
6 receiving the letter and seeing this and seeing that
7 he's saying here, you know, somebody's telling me in
8 your work that you, Renee, told them things that
9 weren't true?

10 A. I don't remember exactly.

11 Q. Would you have reason to have called and yelled
12 at her before that?

13 A. It might have been on the 24th.

14 Q. Well, I don't know. Does that make sense? I
15 mean, if he told you on the 24th that somebody, one of
16 your co-workers had told him you did not have any
17 intention to return. In fact, you actually got other
18 employment. Would you think it would have ended
19 peacefully on the phone? Sort of makes me think that
20 wasn't on the 24th.

21 A. You know, screaming and yelling and then making
22 amends, it could end peacefully --

23 Q. Sure.

24 A. -- because I gave him my word. I sent him an

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 295

1 Q. Yes. Sure. Sure. You already said that. I'm
2 sorry. You said that because you said you had to give
3 your word, you were giving your word?

4 A. I was giving him my word I was coming back. I
5 was devastated. I'm like, well -- and then, after we
6 got off phone peaceful, I'm like maybe this is the end
7 of it. So getting this letter it was a real more slap
8 in the face because here my word didn't mean crap.
9 I've been there for over a year. I trained three or
10 four employees that are all in the office. And I was
11 not trusted.

12 Q. So we call Debby Watson and let her have it.
13 Did she say she didn't tell him anything, or what was
14 her response?

15 A. I don't remember her saying anything. She just
16 let me vent and we kind of got off phone.

17 Q. Did you sort of end on a friendly note with her
18 or not so much at that point?

19 A. I think it was just me venting and her going,
20 "okay."

21 Q. I mean she accused you of simply being a liar,
22 I think. I mean, she said that you were not going to
23 come back and yet, you know, according to you, she
24 knew full well you were going to come back. So she's

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 296

1 saying, no, she's a liar. Would you really have been
2 friendly on the phone?

3 A. I told you I yelled.

4 Q. When you say venting to me, like I vent to my
5 friends. But you weren't really like more venting to
6 her as much as you are venting at her?

7 A. I was just yelling. And I -- it was -- then I
8 realized that I'm being stupid and this is immature
9 and got off the phone because it wasn't going to make
10 a difference.

11 Q. Okay. I understand.

12 Then what happened? Then that's it, the
13 department of labor, and what not, right?

14 A. Then that's -- all that, and then department of
15 labor asked Mr. Fleming to come in for a mediation.

16 Q. Right. Okay. I don't want to get too far of a
17 time block.

18 Did you respond to this letter, the
19 January 7 letter in writing at all?

20 A. No.

21 Q. Did Mr. Butz tell you that might be a good
22 idea, Mr. Michael Butz?

23 A. I don't think he indicated it was good, bad,
24 or -- I didn't respond. At that point I a made

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 297

1 decision I wasn't going to come back if I had to sign
2 a labor contract.

3 Q. But you never got any real information about
4 what that actually meant?

5 A. No.

6 Q. And after Mr. Michael Butz called him, got
7 this information about some kind of labor contract,
8 came back to you, told you about it, what was sort of
9 his interpretation of the whole situation?

10 A. As far as what Fleming said about the labor
11 contract.

12 Q. Sort of what his thoughts were on it. Like
13 this is nonsense or, well, I don't know what's going
14 on.

15 A. He just said it's really up to you. He
16 actually thought I should go look at the labor
17 contract. But at that point I'm like, you know, I
18 didn't have a signed labor contract when I was first
19 hired. I'm not signing one now, no.

20 Q. Did Mr. Butz -- was he sort of a peacemaker in
21 that sense saying maybe we should move towards some
22 kind of peace making?

23 A. No. He just, you know, called Mr. Fleming for
24 me, and he goes, you know, "Here's your option. Do

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 298

1 what you want." And that's when I decided that, no,
2 it wasn't a good idea for me to go back and under
3 those pretenses and probably even hostility. And
4 that's when I decided that, you know what, I'm just
5 going to go to unemployment, see if I can collect
6 that, and just check to see if I can get a job, you
7 know. I have a kid. I can't worry about that. I
8 need to get a job.

9 Q. But that was not in January, right, or that was
10 in January?

11 A. What?

12 Q. Worrying about getting a job, seeking
13 employment.

14 A. After this letter, that's when I went, I
15 believe, to the unemployment. I went to unemployment
16 pretty much with this letter. But I couldn't collect
17 unemployment until that period of time because I was
18 on maternity leave.

19 Q. The end of the six weeks?

20 A. Yes.

21 Q. Which makes sense to you? When they said that
22 to you, you said okay.

23 A. At first I didn't understand. Then they
24 explained to me, with a doctor's note, I couldn't

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 299

1 work, so, therefore, I understood their point of view,
2 that I couldn't collect unemployment until I was
3 allowed to work.

4 Q. The doctor's note, tell me about that. That I
5 think you submitted with maybe your complaint or
6 something like that. You submitted a photocopy to the
7 Court of a doctor's note saying you couldn't work. If
8 you don't recall, that's --

9 A. I remember submitting some doctor notes, but...

10 Q. Just tell me about the doctor's note. I don't
11 need to pull it out.

12 A. Well, you know, they gave me one. I think it
13 was like the 29th or 30th or something.

14 Q. Who is they? Would that have been --

15 A. That would have been --

16 Q. -- ob/gyn?

17 A. Yes.

18 And just for my records, you know, if I
19 needed it, then I would have it. And then I went back
20 to them saying I might need a doctor's note again.

21 Q. Them being the ob/gyn?

22 A. Ob/gyn. So they gave me one for the whole six
23 to eight weeks. The form was never asked for, so I
24 never sent it to them.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 305

1 Q. Okay.

2 A. But Jeanne did make the comment, "Oh, it's a
3 new baby." You know, with C-sections, of course,
4 you're laid up. So you can't drive, so...

5 Q. Yeah. Yeah.

6 A. But she's like "but thank you for the offer."

7 Q. All right. Fair enough. Excellent.

8 So at that time it was absolutely still
9 very cordial, pleasant, familial, no hostility?

10 A. No.

11 Q. Correct?

12 A. Correct. I'm sorry.

13 Q. Now, we know -- hate to get to the law of it.
14 We know that you're bringing your claim under
15 Title VII, right? That's Title VII of the Civil
16 Rights Act of 1964, which is referred to generally as
17 Title VII. Is that your understanding?

18 A. Yes.

19 Q. And under Title VII you have to allege you're
20 in a protected class, and your protected class that
21 you're alleging is pregnancy, correct?

22 A. Correct.

23 Q. And do you feel or do you believe or do you
24 claim that you were discriminated against because you

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 306

1 were pregnant?

2 A. I believe so, yes.

3 Q. And who harbored some kind of bias towards
4 pregnant women, who would that have been?

5 A. There was comments during pregnancy, you know,
6 even during a meeting, you know, Mr. Fleming indicated
7 that the man was not allowed to take off. It was the
8 woman's job to take the kids to work.

9 Q. I want to get to all that actually in great
10 detail, but first I just want to know who the person
11 or persons are that you believe harbored some kind of
12 discriminatory animus against pregnant women?

13 A. Mr. Fleming.

14 Q. Did Jeanne Fleming harbor any discriminatory
15 animus against women?

16 A. She made comments, but it was mostly
17 Mr. Fleming.

18 Q. And you felt that he -- I want to get further,
19 but I don't want to put words into your mouth. Do you
20 know another way to say that instead of sort of the
21 legal terms of it? Instead of harbors discriminatory
22 animus, can you say, did he not like pregnant women?
23 Did he have something against pregnant women. I'm
24 just trying to figure out --

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 307

1 A. He believed that women should stay home to take
2 care of their children. They should be homemakers.

3 Q. Is his wife --

4 A. His wife is a homemaker. She works
5 occasionally, but for the most part, she is a
6 homemaker.

7 Q. And they have five children?

8 A. Five children.

9 Q. And so your position is that Mr. Fleming thinks
10 that women should not work who have children?

11 A. They should stay home.

12 Q. And did any other women at Lawns Unlimited,
13 other than Jeanne Fleming, did any of them have
14 children?

15 A. No. Well, never -- there was only two women,
16 and -- well, three women, but I was the only one ever
17 pregnant.

18 Q. Laurie. Dina. Debby. Anyone else?

19 A. Dina did not have children.

20 Q. Debby, did she have children?

21 A. They were old -- older. They are --

22 Q. Over 18?

23 A. I believe so.

24 Q. And Laurie you already said. Dina?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 308

1 A. Laurie had two. Dina did not have any.

2 Q. How old were Laurie's kids, out of the house?

3 A. No. They were still in the house.

4 Q. Lived with her?

5 A. At the time, yes.

6 Q. And who was the person responsible for hiring
7 you?

8 A. Jeanne and Ed.

9 Q. Joint decision?

10 A. Yes.

11 Q. And who would have been responsible for hiring
12 Laurie?

13 A. Jeanne, but I sat through the interview.

14 Q. All right. And would Mr. Fleming have had any
15 role in that?

16 A. He did come and meet her because I think he was
17 ecstatic because she had -- no. That was -- I'm
18 thinking of Dina. I think Dina had a degree. One of
19 them had a degree, so he was really ecstatic that she
20 had a background like he had.

21 Q. And so would he have had yea or nay power to
22 decide? Would he have had veto power, I mean, to
23 decide if someone was not going to get hired?

24 A. Yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 309

1 Q. So he could have vetoed your hiring?

2 A. Yes.

3 Q. And Laurie's and Debby's and Dina's?

4 A. Yes.

5 Q. So I guess it's your position -- I suppose it's
6 your position that Mr. Fleming -- and I want you to
7 correct me on my part of this if it's wrong -- that
8 Mr. Fleming in his capacity as an agent of Lawns
9 Unlimited discriminated against you because you were
10 pregnant?

11 A. Yes.

12 Q. And that is, in fact, why he terminated you,
13 because you were pregnant?

14 A. I believe so.

15 Q. And what about the fact that he had been told,
16 perhaps erroneously, but he had been told, that you
17 were not returning, how did that play a role?

18 A. That's his decision on that, but as far as --

19 Q. Do you believe that he believed that?

20 A. I don't know what he thought.

21 Q. Well, you know --

22 A. I'm not in his brain.

23 Q. You do conclude that he thought that?

24 A. Based on this letter, yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 310

1 Q. Yes what?

2 A. Based on his letter, he believed that fellow
3 co-workers said I wasn't coming back.

4 Q. You believe that that was part of the reason
5 that he terminated you?

6 A. Well, that was part of the reason and because I
7 cost him too much money in his health insurance.

8 Q. And that's stated in the letter?

9 A. Yes, it is.

10 Q. The letter states that you had your baby on
11 December 30th and they were asking for it to be
12 extended to cover the delivery, right? Is that right,
13 your health insurance?

14 A. December 31th.

15 Q. Which would have covered the delivery, right?

16 A. Yes.

17 Q. The fact that he asked the health insurance
18 company to extend your coverage to cover you during
19 your delivery, does that comport with the fact that
20 you believe he had a discriminatory bias?

21 A. Well, let's keep going. It says, "Lawns
22 Unlimited has now incurred a much higher premium as a
23 result of your working for us for one year to pay
24 bills estimated in excess \$23,000, and then leaving

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 314

1 bill, but for an employee who no longer works there.

2 A. I guess it's interpreted -- interpretations and
3 you know...

4 Q. I guess I understand if you think this was just
5 made up.

6 A. I don't know how he got the figures unless he
7 called his insurance -- I don't know. You know. I'm
8 not Mr. Fleming, so...

9 Q. I'm not asking you to speak on his behalf. I
10 just want to know what you thought when you read it.

11 A. That he discriminated against me. He basically
12 fired me because I was out on maternity leave, that he
13 was like, hell with it, she's not coming back. I'm
14 firing while she's out on maternity leave. And
15 obviously the EEO -- the DDOL found him because I got
16 a right-to-sue letter.

17 Q. Right. Well, for the record, everyone gets a
18 right-to-sue letter. It's part of the process.
19 That's why we have an administrative process. So you
20 can get a cause or no cause findings and you still get
21 a right to sue letter. It's the law, which there's a
22 reason for that. I mean, the reason for that is
23 everyone has a constitutional right to a trial by
24 jury. So we couldn't implement a system where an

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 315

1 administrative agency takes away that right for you to
2 take your lawsuit to court.

3 What the government can do is implement a
4 system where you have to take additional steps with an
5 administrative agency such as the department of labor
6 before you get to sue. So you always have a right
7 to -- it's a constitutional right to go get a trial.
8 So the fact that they issue a right-to-sue letter
9 doesn't mean --

10 A. They found cause of him discriminating.

11 Q. Now, that may mean something. Legally it
12 doesn't, but it might mean something factually.

13 But when you got the letter, did you think
14 that he thought -- he says, our greater concern is
15 that you told fellow co-workers, dot, dot, dot, that
16 you never had any intentions of returning at all from
17 that maternity leave. Did you think that he was
18 concerned that fellow co-workers told him that you
19 never had any intentions of returning at all from your
20 maternity leave? Do you think he was concerned?

21 A. I believe the first or second paragraph of the
22 authorization and the last per -- the "per
23 conversation with our health insurance" is the biggest
24 thing because usually you write most important thing

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 316

1 up on top and then the next important thing at the
2 bottom.

3 Q. Well, without implying too much into the
4 structural framework of letter drafting, do you think
5 that he was concerned that you told fellow co-workers,
6 or that he believed you had told fellow co-workers you
7 were not returning from maternity leave? Do you
8 believe that that was the case?

9 A. It's not relevant.

10 Q. I'm just asking you a question. Did you
11 believe that? I mean, did you think he was lying or
12 did you think Debby Watson had told him that and that
13 she was lying? Did you think he had completely made
14 that up? I mean, that's all I'm asking. I'm not
15 asking whether these other things don't exist. I'm
16 just asking this one limited piece.

17 A. You know, he could have believed that, but why
18 didn't he believe me over them?

19 Q. I'm not asking if he could. Anybody could
20 have, should have, would have. I'm asking you, when
21 you got this letter, did you think that is what he
22 thought, in addition to other things?

23 A. At first was pregnancy.

24 Q. That's not -- I mean, we can go back and forth.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 317

1 I can continue to ask the same question. You can
2 continue to avoid, but I'm going to continue to ask.

3 A. That was part of it, yes.

4 Q. So you did think -- I mean, which is, I would
5 assume, in line with why you would call Debby Watson
6 and say, "What are you doing?" Right?

7 A. Yes.

8 Q. Because you believed when you read this that it
9 was Debby Watson probably who had made this up, right?
10 You said that you suspected it would have been Debby
11 Watson that told this falsity?

12 A. I would assume it was her.

13 Q. That's fine. I mean, that's all I'm asking is
14 what you know, what your thoughts were when you
15 received the letter.

16 So when you got the letter you said, you
17 know, in addition to other things you said that Debby
18 Watson must have been the one who told him this
19 nonsense, right?

20 A. Yes.

21 Q. So you did believe at that time that he thought
22 that was fact, is that right?

23 A. I believe there was a lot of facts, but that
24 was part -- part B of the facts.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 318

1 Q. Agreed. I'm not saying it was the most
2 important. I'm not saying it was the least important
3 fact or where it was written in the letter. I'm just
4 asking, was it a consideration?

5 A. Yes.

6 Q. And was it your desire to get it straightened
7 out, make the record clear?

8 A. I tried.

9 Q. Okay. Tell me how you tried.

10 A. We talked. I sent him e-mails. I mean, I
11 was his employee who was there a lot longer and
12 trained so many people, and I mean, it's not my job to
13 convince him. It's him to believe me and understand
14 that I went out on maternity leave, and he chose to
15 make a bad and wrongful choice.

16 Q. But after January 14th, when you received the
17 letter, did you do anything to clarify it?

18 A. I had Mr. Butz, Michael Butz contact him.

19 Q. And when Michael Butz contacted Mr. Fleming,
20 was part of what he said dealing with this?

21 A. It was to try to get my job back.

22 Q. How did he do that?

23 A. He called him and said, "Mr. Fleming, give her
24 her job back. Reinstate her insurance." Mr. Fleming

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 319

1 said, "Absolutely not. This is my business. I can do
2 whatever the hell I want. She wants to come back,
3 she's got to sign a labor contract."

4 I'm not signing a labor contract. I'm not
5 doing it.

6 Q. Well, you didn't know what the contract was
7 right?

8 A. Exactly. Just knew it was a labor contract.

9 Q. Which you'd never seen except for in some -- I
10 forget -- one context, I think.

11 A. But why would I be the only one?

12 Q. I'm not saying -- I'm not saying you should
13 have signed it.

14 A. Because I was the only one that was pregnant.

15 Q. I'm not saying you should have signed it. I'm
16 just making sure the record is clear.

17 And did Mr. Butz, Michael Butz say during
18 that conversation, "Look, this is not the case.

19 You're wrong. You've got it all wrong, Mr. Fleming"?

20 A. I would be speculating. I'm not sure. I was
21 not part of the conversation.

22 Q. So as far as you know for certain, no one ever
23 contacted Mr. Fleming and said, "Mr. Fleming, you've
24 got it wrong; she didn't tell any co-worker that"?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 320

1 A. I sent documentation.

2 Q. To him?

3 A. I sent Mr. Fleming an e-mail. I've --

4 Q. Wait. Wait. Wait. One step at a time.

5 A. I talked to him the 23rd, the 24th.

6 Q. I'm talking about after January 14th, 2004, did
7 anybody that you're aware of contact Mr. Fleming and
8 say, "Mr. Fleming, you've got it wrong; she did not
9 tell co-workers that she not going to return, and she
10 didn't accept other employment," et cetera?

11 A. The only conversation that I am aware of was
12 when Michael Butz talked with Mr. Fleming.

13 Q. Fair enough. And during that conversation that
14 you are aware of, he did not say, "Mr. Fleming, this
15 is not -- your letter isn't accurate"?

16 A. With --

17 Q. Without speculating.

18 A. Yeah. I don't know what exactly was said. I
19 just know that part of it.

20 MS. DiBIANCA: All right. Let's take a
21 break.

22 (Luncheon recess taken.)

23 MS. DiBIANCA: We will go back on the
24 record. We are finishing up plaintiff's deposition in

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 321

1 Butz versus Lawns Unlimited. And we are all back that
2 were present for the morning session.

3 BY MS. DiBIANCA:

4 Q. While you had a break over lunch, did you have
5 anything that you want to supplement or amend for the
6 morning session?

7 A. No.

8 Q. When you were at Lawns Unlimited when you were
9 covered by their insurance, did you have co-pays for
10 doctor visits?

11 A. Yes.

12 Q. And you do or do not remember how much they
13 were?

14 A. I don't remember.

15 Q. I know we went over that yesterday and I
16 apologize for asking again. And so the co-pay amount
17 is an amount that is your responsibility, correct?

18 A. Correct.

19 Q. So any amount of medical expenses that you
20 would have had -- let's say if you thought that
21 insurance coverage ended the 31st -- so if you went on
22 the 27th to the pharmacy and got a prescription and
23 you were still under Lawns health care at that point,
24 right?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 327

1 first question at the top is -- actually, probably
2 should say, could you tell me what that is? Does that
3 look familiar?

4 A. It is the questionnaire form that was filled
5 out, I believe, at the DDOL.

6 Q. And who filled it out.

7 A. Myself.

8 Q. And then the first question at the top of that
9 page, I think question 20, can you tell me what that
10 says?

11 A. "Why do you believe that you and person cited
12 in 19 above are just disciplined more severely than
13 those persons cited in 18 above?"

14 Q. And is that, your understanding of that
15 question is, not having read 18 and 19 above, but is
16 it that -- why do you feel you were discriminated
17 against? Is that how you understand that?

18 A. Yes.

19 Q. And what did you respond?

20 A. That I believe I was let go due to insurance
21 reasons, clearly mentioned in paragraph 4 of the
22 letter.

23 Q. And is that your position today as well?

24 A. Yes.

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 329

1 Q. Actually I think I'm asking a different
2 question. So you're referring to the evidence of
3 discrimination, is that right, what you see as
4 evidence of discrimination?

5 A. Yes.

6 Q. I was thinking, why would they have
7 discriminated? That's sort of -- do you see the
8 difference? Let me think of a better way to put it if
9 that's not clear.

10 In other words, what was their motivation?
11 I say they, and I just mean defendants. What was
12 their motivation to act to treat you more severely?

13 A. For the insurance. I think it was for the
14 insurance reasons and that's why they let me go. I
15 mean I still feel that way.

16 Q. That's fine. I just want to get it on the
17 record.

18 That's all I have for that one.

19 And is it your position that Jeanne
20 Fleming did not harbor a discriminatory animus based
21 on pregnancy?

22 A. Harbor?

23 Q. Have.

24 A. Does she make any -- make any comments?

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 330

1 Q. No. I mean, did you have any reason to believe
2 that she disliked pregnant people, pregnant women?

3 A. I don't know. I mean after the letter and
4 comments being made, in my eyes, yes. She didn't have
5 a problem with me being pregnant.

6 Q. So it was Mr. and Mrs. Fleming then, is that
7 right? You believe that Mrs. Fleming actually
8 discriminated against you?

9 A. She wasn't in the office that often, so it was
10 Mr. Fleming, he's that one that terminated me. But
11 Mrs. Fleming is his wife, so...

12 Q. So she went along with it because she was his
13 wife or because she actually was acting out towards
14 pregnant people, had discriminatory bias towards
15 pregnant people?

16 A. She'd make comments, you know, about homemaking,
17 but that's it. I mean, as far as any actions are
18 concerned, it was all Mr. Fleming.

19 Q. So he was the discriminatory actor?

20 A. Yes.

21 Q. And she had the authority to but chose not to
22 act on your behalf?

23 A. I guess not. She never called me.

24 Q. So we agree that you definitely state that she

Butz v. Lawns Unlimited, Ltd. and Fleming
Renee M. Butz - DiBianca

Page 331

1 did not act on your behalf. Did she have the
2 authority to act on your behalf?

3 A. She is one of -- she's the secretary/treasurer.
4 She helped -- you know, she was part of hiring me,
5 so...

6 Q. So you would assume that?

7 A. Yes.

8 Q. Okay. That's fine.

9 Were you ever at any time offered
10 reinstatement at Lawns Unlimited?

11 A. Was I ever offered reinstatement? No.

12 Q. Were you offered reinstatement at the
13 unemployment insurance board hearing?

14 A. No.

15 Q. Was reinstatement discussed at that time?

16 A. I believe it was discussed, but at that point I
17 already had a job.

18 Q. So you would not have accepted it if it had
19 been offered then?

20 A. Correct. A little late.

21 Q. And they knew you were working then, right?

22 A. Yes.

23 Q. It's your testimony you did not seek medical
24 treatment for any kind of medical issue you were